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Legislative History – Montana Session Law

Chapter: 7 Session L: 1995

Bill Number: SB 10

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	Senate
Committee: Judiciary	Committee: Judiciary
Hearing Date(s): 1/20/1995	Hearing Date(s): 1/05/1995
Committee Report: 1/20/1995	Committee Report: 1/09/1995

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 1/9/2025

Notes:

SB 10 INTRODUCED BY GAGE

GRANT STATE RIGHT TO JURY TRIAL IN ALL FELONY AND MISDEMEANOR CASES IN ALL COURTS

12/19	INTRODUCED		
12/23	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/05	HEARING		
1/05	FISCAL NOTE RECEIVED		
1/05	FISCAL NOTE PRINTED		
1/09	COMMITTEE REPORT—BILL PASSED		
1/10	2ND READING PASSED	33	15
1/11	3RD READING PASSED	36	12
	TRANSMITTED TO HOUSE		
1/12	FIRST READING		
1/12	REFERRED TO JUDICIARY		
1/20	HEARING		
1/23	COMMITTEE REPORT—BILL CONCURRED		
1/24	2ND READING CONCURRED	99	1
1/25	3RD READING CONCURRED	90	7
	RETURNED TO SENATE		
1/26	SIGNED BY PRESIDENT		
1/26	SIGNED BY SPEAKER		
1/27	TRANSMITTED TO GOVERNOR		
1/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 7		
	EFFECTIVE DATE: 10/01/95		

SB 11 INTRODUCED BY KLAMPE

GENERALLY REVISE THE LAW REGARDING THE PRACTICE OF VETERINARY MEDICINE; EXEMPT CERTAIN PERSONS FROM LICENSURE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

12/15	INTRODUCED
12/23	FISCAL NOTE REQUESTED
1/02	FISCAL NOTE RECEIVED
1/02	FIRST READING
1/02	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
1/03	FISCAL NOTE PRINTED
1/03	REREFERRED TO BUSINESS & INDUSTRY
1/11	HEARING
1/12	COMMITTEE REPORT—BILL PASSED AS AMENDED
1/13	REREFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/25	HEARING
1/27	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY
	DIED IN COMMITTEE

SB 12 INTRODUCED BY HARP

GRANT BOARD OF REALTY REGULATION AUTHORITY TO IMPOSE ADMINISTRATIVE FINES ON LICENSEES

BY REQUEST OF THE DEPARTMENT OF COMMERCE

12/15	INTRODUCED
12/23	FISCAL NOTE REQUESTED
1/02	FISCAL NOTE PRINTED
1/02	FIRST READING
1/02	REFERRED TO BUSINESS & INDUSTRY

SENATE BILL NO. 10

INTRODUCED BY GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING THE STATE THE RIGHT TO A JURY TRIAL IN ALL FELONY AND MISDEMEANOR CASES IN ALL COURTS; AND AMENDING SECTIONS 46-16-110 AND 46-17-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-16-110, MCA, is amended to read:

"**46-16-110. Right to jury trial -- waiver.** (1) ~~Defendants~~ The parties in ~~all~~ a felony ~~cases shall~~ case have a right to trial by a jury of 12 persons.

(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than that to which they are entitled.

(3) Upon written consent of the ~~defendant~~ parties, a trial by jury may be waived."

Section 2. Section 46-17-201, MCA, is amended to read:

"**46-17-201. Juries in misdemeanor cases.** (1) The ~~defendant~~ parties in a misdemeanor case ~~is~~ are entitled to a jury of six qualified persons~~,~~ but ~~the parties~~ may agree to a number less than six at any time before the verdict.

(2) Upon consent of the ~~defendant~~ parties, a trial by jury may be waived."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0010, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act granting the state the right to a jury trial in all felony and misdemeanor cases in all courts.

FISCAL IMPACT:

Passage of ~~SB10~~ will have no fiscal impact on state government.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Some fiscal impact, though perceived minimal and estimated to average one jury trial per year, will be experienced by local governments due to jury costs.

Dave Lewis 1-4-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

1/5/95

DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0010, as introduced

SB 10

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 10

INTRODUCED BY GAGE

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-END-

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN** on January 5, 1995, at 10:00 a.m.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 1, SB 10
Executive Action: SB 26

HEARING ON SB 1

[Tape 1, Side A]

Opening Statement by Sponsor:

SENATOR DELWYN GAGE, SD 43, Cut Bank, presented SB 1, which is "an act generally revising and clarifying the Montana Code Annotated: Directing the Code Commissioner to clarify erroneous references contained in material enacted by the 54th

Legislature." **SENATOR GAGE** explained that this code commissioner bill comes before the legislature each session and modifies parts of the law that have been preempted by court decisions and/or corrects errors that are not substantive in nature.

Proponents' Testimony:

Greg Petesch, Code Commissioner for the State of Montana, told the committee that the statute requires him to prepare a report and legislation to correct errors in the code. The procedure used to prepare this bill has been designed over time to prevent controversy. All proposed amendments have been sent in advance to the parties affected by the provisions.

Mr. Petesch highlighted the following provisions that appear to be substantive and explained why they were not:

*Local option gas tax in Section 8. Previously exempted from the transfer in collection of all fuel taxes from the Department of Revenue to the Department of Transportation, this clarifies that all fuel taxes are now collected by the Department of Revenue.

*Allocation of taxes in Section 10. In the section of the law that deals with oil severance tax collections, the law will be amended to read all amounts of collections rather than the remainder; there is no excess to be allocated.

*School special education law in Section 34. This deals with the removal of an emotionally disturbed child. The Department of Family Services pointed out that definition is never used in DFS law and should be removed. There is no provision in DFS laws that use that term. The Office of Public Instruction uses the same definition, but one that already exists and conforms to federal requirements and they preferred not to have this additional definition in the codes.

*Probate in Section 41. This is actually a presumption under the evidentiary provisions. During the last session the law was revised to read that a person was presumed dead after five years of not being heard from. The evidentiary presumptions contain a provision of seven years. These conformed before. It does not make sense to declare a person dead for one purpose but not another. This change conforms the presumption of death to a five year period for both probate and other evidentiary matters.

*Duties of Code Commissioner in Section 73. This section has been included in the last five sessions. This implements an existing section of the statute governing the duties of the code commissioner, that says when given the authority by another law, the code commissioner may correct erroneous references in law. If there is any doubt, the references are bracketed and brought back to the legislature the next time, he said. All changes are reported in the code commissioner report which is published in the annotations in the end.

Mr. Petesch said there was a section regarding notary publics to repeal because of the adoption of the uniform material acts bill last session. The other form is now archaic.

Mr. Petesch also said that there were several provisions referring to the governor's centennial mansion enacted as part of the centennial process, but the time is long past for the state to exercise its options so these statutes would repealed.

Mr. Petesch explained the repealing of the dangerous drug tax. This was declared unconstitutional by the Supreme Court on the basis of double jeopardy. This would normally not be done in a code commission bill and the committee would be allowed to amend it as they chose, because he said he knows of no way to undo a statute that's been acknowledged as a double jeopardy in a criminal provision even though it was civil in nature. It would be better to get it off the books and if anyone wanted to pursue a dangerous drug tax; to start anew. There is currently a bill request in to revise the dangerous drug tax and the sponsor thought it would be better to start with a new set of statutes rather than trying to undo the double jeopardy provision attached to this civil statute.

Another set of statutes the bill would repeal dealt with the retirement adjustment for state retirees. It was struck down when the legislature dealt with the ramifications of the tax treatment of federal retirees. They're being repealed rather than revised because the court said that they were invalid because the bill contained two subjects in violation of the single subject provision. **Mr. Petesch** said he knew of no way to remedy a bill to remove a subject after it's been passed.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR AL BISHOP inquired why did he change the non-probate to five instead of changing the probate to seven.

Mr. Petesch answered that the probate section was changed last session. This was an oversight.

SENATOR LORENTS GROSFIELD asked **Mr. Petesch** about the two-subject provision and inquired if it was normal for the supreme court to nullify both provisions.

Mr. Petesch said that this particular discussion had taken up much of the opinion in the case and there was a separability clause included in that bill because the legislature was aware of that potentially. The Supreme Court implemented the separability clause to strike the retirement adjustment because the tax

treatment was mandated for conformity with federal law. The court determined that this was the true purpose of the bill, and the retirement adjustment was an attempt to undo that tax treatment that was required in the first half of the bill for state retirees.

SENATOR MIKE HALLIGAN asked about the definition of an emotionally disturbed child, as used in special education status. He asked if it was nowhere else in the statute?

Mr. Petesch said that the definition is being retained in the special education statutes, but is being removed from the program under the Department of Family Services term where it is never used.

DISCUSSION:

CHAIRMAN CRIPPEN said he would be willing to appoint a sub-committee to go over these provisions with **Mr. Petesch** if any of the committee members wanted to satisfy themselves and the rest of the committee that the changes are appropriate and not taking away substantive rights.

Closing by Sponsor:

SENATOR GAGE, in closing on SB 10, remarked on the dangerous drug tax issue and wondered how the Internal Revenue Service could penalize or jail a person for fraud, when one is a civil case and the other is criminal. The courts don't have any problem with jailing for a criminal case, he said, but they do with this. He asked for a favorable consideration on the bill.

HEARING ON SB 10

Opening Statement by Sponsor:

SENATOR DELWYN GAGE, SD 43, Cut Bank, presented SB 10, an act entitled: An act granting the state the right to a jury trial in all felony and misdemeanor cases in all courts." **SENATOR GAGE** said the bill attempts to level the playing field with regard to court activity in jury trials.

Proponents' Testimony:

John Connor, representing the Montana County Attorneys' Association, spoke in support of the bill. This bill is a request from that association in response to a problem that arose from the decision of the Montana Supreme Court in 1993 called Nelson vs. Supreme Court. Then-County Attorney Nelson had prosecuted a felonious assault and obstruction of justice case in

which the defendant attempted to waive jury trial. Nelson objected to that; he wanted the matter heard before the jury but the district court ruled against him. That resulted in this original proceeding in the Supreme Court. In that case, the court concluded that Article 2, Section 26 of the Constitution guarantees to the defendant in criminal cases the right to be tried by a jury. The court also pointed out that the constitutional provision allows the legislature to provide a procedure by which there is a waiver of this right of trial by jury.

Prior to 1991 legislation in that regard provided that the waiver by trial by jury had to be by both parties. In the 1993 revisions to the criminal procedure statues, the law was changed from saying "parties" to read "defendant" has the right to waive trial. The court construed that provision in conjunction with the constitutional provision to say that the state could not insist on a right to trial by jury as long as the defendant was waiving that right.

This bill, he said, would attempt to put the language back where it was prior to 1991. The present law has worked hardship on prosecutors, he said. It would not infringe upon the right of a defendant and does not infringe upon his right to trial by jury. It tries to address the situation where the court may be disposed in a particular situation for a defense point of view and disallow the defendant the tactic of getting it before the court rather than a jury. Judges are disposed to a particular point of view.

This bill would allow the situation to be put before the people and let the jury decide the facts in the law. As the law is structured now, the state does not have a say in whether the jury is going to be waived. He asked the committee for support on SB 10.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR STEVE DOHERTY questioned what other states do in this regard.

Mr. Connor answered that there is a split of authority on it. California and Oklahoma require consent of the parties. Some jurisdictions say that the judge has to decide, some say the defendant has the choice. He did not think there was any consensus.

SENATOR DOHERTY said that prosecutors take the bias of a judge

into account when they draw the judge who's going to hear the case and are able to strike the judge. He asked why this would make an even playing field when the playing field is already even since anybody can strike the judge for no cause at all?

Mr. Connor replied that it would be possible for either side to disqualify a judge without showing a cause, but if you are operating in a small jurisdiction, where this problem arose, and are hearing a bias against a legal point of view, you cannot consistently disqualify that judge. It's not fair to other judges who are called in to sit on the case and not fair to the judge who's there. This law would put the question before the people to decide.

SENATOR DOHERTY asked about the importance of the jury system coming from the prosecutor's perspective that it's somewhat unusual to hear about a prosecutor who wants to get the case before the people instead of the judge.

Mr. Connor responded that what they are proposing in this bill is a rarity. Normally if the defendant wants to waive the jury trial, the state has no objection. He did an informal survey on how often this kind of thing would arise among two prosecutors and he said it's only arisen twice in many years. His wife, who is the Lewis and Clark County Public Defender, said it has never happened. He said that you would have 12 people deciding instead of one, that would be the difference in his opinion.

SENATOR SUE BARTLETT asked **Mr. Connor** if he could give other examples in which the state might request a jury trial when the defense waives it.

Mr. Connor gave an example from his own experience of a case from eastern Montana where he was prosecuting a teacher who was charged with child sex abuse involving a freshman girl. During the case, the judge made a comment along the lines of, "Oh, to be a sex offender again." **Mr. Connor** said he would not want to try that case before that judge without a jury panel because he had perceived a bias on his part and may not fairly judge the facts of that case.

SENATOR BARTLETT asked is there were other circumstances beyond the potential bias by the judge in which the state might want a jury trial and the defense might not?

Mr. Connor said that there may be some, but none would occur to him at the moment, and that's why he thought it would be so infrequently used.

SENATOR LARRY BAER was concerned that we would be taking away one of the defendant's rights by negating his choice of either trial by judge or jury should the prosecutor demand a trial by jury. He thought that while it was not a significant factor, it should have some weight in the determination.

Mr. Connor said that the Supreme Court points out that the defendant doesn't have a constitutional right to a non-jury trial, so it is by statute that the legislature decides how that should be operated. In this bill, he said, we're only trying to assure that the state has the same rights the defendant has.

SENATOR BAER disagreed with **Mr. Connor's** answer and said that we are diluting the power of the defendant whether he would have a jury trial or be tried by a judge and he thought it should be given consideration.

Mr. Connor agreed saying he thought it would be a tactical consideration.

CHAIRMAN CRIPPEN commented that the ability of the state to go to court and prove an individual's guilt has become much more efficient. The trial by jury was created because prior to that they didn't have the right to be heard before their peers, rather, they went before the magistrate. But never once, he said, has it been stated that the state shall also have the right to present its case before its peers. The state has no peers, he said. He said we seem to have confused the theory of getting out the truth which is ridiculous in a criminal case, and somewhat repugnant. Of the judge disqualification issue, he noted, it's the state that's bringing the charges, the defendant is the defense and is innocent on all counts until proven guilty. It's the state's responsibility. He said he could not understand why the state would have the right to a jury trial in a criminal case.

Mr. Connor responded that there was not that great a disparity between the defendant and the state. A prosecutor has to show testimony that will convince twelve people beyond a reasonable doubt and the defendant just has to convince one person that there is a reasonable doubt. He said that he liked to believe that a criminal trial is an effort to try to present the truth.

CHAIRMAN CRIPPEN added that he did not think disparity had much to do with it. The state has the burden of proof, he said, not truth.

Closing by Sponsor:

In closing, **SENATOR GAGE,** told the committee that if had not thought this bill was needed, he would not have agreed to carry the measure. He commented that everyone needs an equal shot and that the laws of the land are laws of the people and that prosecutors are representing the people of the state of Montana. They should have an equal opportunity as does the defendant to have their case heard.

EXECUTIVE ACTION ON SB 26

[Tape 1, Side B]

Discussion: **Valencia Lane, Staff Attorney,** explained the amendment requested by **SENATOR EVE FRANKLIN** she had drawn up on SB 26.

Motion/Vote: **SENATOR BISHOP MOVED THAT THE AMENDMENT BE ADOPTED.**

Discussion: **SENATOR DOHERTY** pointed out that the issue of telecommunication as it pertains to adults and youth in the amendment has not really been heard.

SENATOR HALLIGAN asked **Candy Wimmers** what happened to the juvenile audio-visual discussed in the interim?

Ms. Wimmers said she did not know, she thought they had intended to include it in the youth court act, but on checking, it was not.

SENATOR HALLIGAN expressed his concern about two subjects in this bill, and that it would be rejected on the floor.

Ms. Lane agreed that the amendments do expand the bill and discussed the MACO amendments, also reconsidering the bill.

SENATOR GROSFIELD wanted to know if we held another hearing were held, would that be sufficient to the court.

SENATOR HALLIGAN said that since **Ms. Lane** had drafted the amendment to actually change the title to include all issues, it would be covered.

SENATOR BAER agreed with **SENATORS HALLIGAN** and **DOHERTY** and **Ms. Lane.** He would like more time to consider the bill particularly in the areas of costs of equipment and continuing costs. He preferred to separate those issues.

CHAIRMAN CRIPPEN asked **Mr. Gordon Morris, MACO,** if **SENATORS KEATING** and **JOHNSON** had withdrawn their requests. He said they had cancelled.

SENATOR HALLIGAN expressed his wish to keep this bill in this committee. He encouraged a vote for the amendment.

SENATOR BARTLETT said that if the committee amends the bill procedurally then it would need to ask for a gray bill because traditionally the amendments would not appear in the body of the bill until the second reading.

Ms. Lane said she would do that.

CHAIRMAN CRIPPEN recommended adoption of the amendment and a re-scheduling of the hearing for January 9th.

Vote: The **MOTION CARRIED UNANIMOUSLY** on oral vote.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:07 a.m.

BRUCE CRIPPEN, Chair

JUDY FELAND, Secretary

BC/jf

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1-5-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

DATE 01-05-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB1, SB 10

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Greg Petesch	Leg. Council	SB1		
John Connot	MT. County Atty Assn	SB10	X	
JOE ROBERTS	Mt. Cty Atty's Assoc	SB10	x	
MICHAEL KEEDY	MJBA			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 9, 1995, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 29
Executive Action: SB 1, SB 10, SB 29

HEARING ON SB 29

{Tape: 1; Side: A }

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, Senate District No. 29, said SB 29 is a technical bill which addresses problem areas in our child support enforcement laws. Sections 1 through 6 and Section 10 all relate generally to the same topic and are simply changes in different

portions of the Code so that all portions relating to statutes of limitations will be the same. Sections 7, 11 and 13 all relate to withholding of income. Section 17 is a coordinating instruction. Section 9 covers a topic which is addressed much more extensively in another bill. If that bill passes, Section 9 of this bill will be void. If the other bill does not pass and this bill does pass, Section 9 of this bill will take effect. **SENATOR BARTLETT** asked **Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator,** to give the committee a brief overview of child support and explain the problems this bill is trying to address.

Proponents' Testimony:

Mary Ann Wellbank, SRS Child Support Enforcement Division Administrator, presented her written testimony, **EXHIBIT 1. Ms. Wellbank** handed out a pamphlet entitled, "Department of Social and Rehabilitation Services Program Descriptions", **EXHIBIT 2.** The section dealing with child support enforcement was developed for legislators to give an overview of their program. The Division is authorized under Title IV-D of the Social Security Act. The CSED has the administrative authority, without going to court, to establish a new child support order. Their primary means of enforcing child support is through income withholding. They also distribute money if the obligor, person paying child support, has several different families. Their agency is also responsible for establishing the Montana Child Support Guidelines. The CSED has an administrative law judge who puts out orders every time they take an action. These orders are appealable to the district court and Supreme Court. Montana now has over $120 million in arrearages owed by obligors. **Ms. Wellbank** stated that Section 7 of SB 29 addresses the problem of a three pay period month, wherein the amount withheld exceeds the amount per month of the child support order. Currently, they must return the excess to the obligor which causes a disruption in regular child support to the obligee. Section 12 of SB 29 addresses an unintentional quirk in the law that stays their ability to collect current child support while a hearing on arrearages is pending. Section 15 addresses interstate cooperation in establishment of court orders. A provision was left out of the Uniform Interstate Family Support Act, adopted by the state in 1993. When there are court orders running simultaneously in two states, any money the obligor pays toward one order is credited for the same time period to the other order.

Kate Cholewa of the Montana Women's Lobby stated they are in support of the bill.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SHARON ESTRADA asked how many obligors who have fled the state are included in the $120 million of arrearages. There are approximately 42,000 individuals, of course, not all are delinquent. They will have a new computer program in operation in a couple of weeks and she would be able to give a number at that time. **SENATOR ESTRADA** further asked about the difficulty of collecting from obligors who now live in another state. **Ms. Wellbank** stated that each state has jurisdiction over the people in their state and many different rules apply making it difficult to collect past due amounts.

SENATOR LORENTS GROSFIELD asked for clarification between the terms "child care" and "child support". **Ms. Wellbank** stated different terms are use by different judges. The Division's authority allows them to collect for "child support". If an order is not worded correctly, they cannot collect the money. **Ms. Wellbank** stated that the obligor still owes for both child care and child support, however, their department cannot collect for child care.

SENATOR STEVE DOHERTY asked whether Montana is at the mercy of other states in order to get past due money. **Ms. Wellbank** stated there is a federal law entitled Federal Child Support Recovery Act where a U. S. attorney will prosecute the most egregious cases. **SENATOR DOHERTY** asked how often a mother owed less than $100,000 to $200,000 will get anything. **Ms. Wellbank** stated that would not happen very often. **SENATOR DOHERTY** further asked whether the Division has considered turning some of these bills over to bill collectors. **Ms. Wellbank** stated that within the coming biennium they would start turning over severely past due cases. They can only turn over AFDC arrearages. Non-AFDC arrearages are monies owed the obligee and the state has no interest in these funds.

SENATOR BRUCE CRIPPEN stated that he had received written testimony from **Peter S. Blouke, Director of SRS**, and it would be included with the minutes as **EXHIBIT 3**.

Closing by Sponsor:

SENATOR BARTLETT did not offer any more remarks in closing.

EXECUTIVE ACTION ON SB 1

Motion/Vote: **SENATOR MIKE HALLIGAN** moved **SB 1 DO PASS.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON 29

Motion/Vote: **SENATOR GROSFIELD** moved **SB 29 DO PASS.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 10

Motion: **SENATOR HALLIGAN** moved that **SB 10 DO PASS.**

Discussion: **SENATOR HALLIGAN** stated that prior to 1991 the state had this authority. **Valencia Lane** stated that the state prepared a criminal procedure reorganization bill which had been worked on by county attorneys for up to four years before the bill was presented to the legislature. This bill completely reorganized criminal procedure statutes and in this package the law was changed. SB 10 would return this authority to the state the way it was before the reorganization bill.

SENATOR LARRY BAER stated he was not in favor of the state diluting the rights of a criminal defendant.

SENATOR REINY JABS questioned whether the defendant would lose any rights. **SENATOR BAER** stated that as it now stands, the defendant has a right to request a trial by judge. If this bill passes, the defendant will no longer have that discretionary power and be subject to a trial by jury if the prosecution so desires and thus the defendant would lose a discretionary right.

SENATOR GROSFIELD stated that in a case of perceived prejudice on behalf of the prosecution, the state would be able to appeal.

SENATOR AL BISHOP said this bill gets tough on crime by giving the state a better shot at going after a defendant.

SENATOR BARTLETT commented that prosecutors will not be asking for jury trials which are substantially more expensive than a trial by judge unless it is absolutely essential to their case.

SENATOR CRIPPEN stated he opposes the bill. The state's job is to show that the defendant has committed the crime. The state has to deal with the burden of proof. The defense does not have any burden of proof. **SENATOR CRIPPEN** feels the change in 1991 does not take any rights away from the prosecution.

Vote: The **Do Pass** motion for **SB 10 CARRIED** with **SENATORS CRIPPEN, BAER, ESTRADA, GROSFIELD,** and **HOLDEN** voting NO.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:00 a.m.

BRUCE D. CRIPPEN, Chair

JUDY J. KEINTZ, Secretary

BC/jjk

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1-9-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB1 (first reading copy -- white), respectfully report that SB1 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB10 (first reading copy -- white), respectfully report that SB10 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

January 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 29 (first reading copy -- white), respectfully report that SB 29 do pass.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 1/9/95 BILL NO. 10 NUMBER

MOTION: Senator Halligan moved that SB 10 do pass.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		✓
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD		✓
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON	✓	

SEN:1995
wp:rlclvote.man

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 1/9/95
BILL NO. SB 29

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

3075 N MONTANA, SUITE 112
PO BOX 202943
HELENA, MONTANA 59620-2943

Senate Bill 29
"Omnibus Bill"
Sponsored by Senator Sue Bartlett
Testimony of Mary Ann Wellbank
SRS Child Support Enforcement Division Administrator

The Child Support Enforcement Division of the Department of Social and Rehabilitation Services serves over 42,000 individuals. The division caseload is growing at a rate of 300 new cases per month. The CSED is responsible for performing various federally mandated functions, all with the ultimate goal of collecting support for children. This starts with locating absent parents, establishing paternity in out-of-wedlock births, establishing support orders, enforcing and modifying support orders, and collecting and distributing monies among families in a timely manner. Each process I have just described is legally driven requiring very specific statutory authority for our actions. As the demand for services increases, we need to continue to find ways of operating the division more efficiently and ironing out existing problems to meet the needs of our constituents. That is why the SRS/CSED must constantly re-evaluate and develop legislation.

This particular bill was developed as a clean-up of existing statutes with the aim of improving the efficiency and effectiveness of the program. The provisions of the bill are as follows:

Sections **1 through 6 & 10** clarify changes made to various statutes of limitations and collection limitations on child support during the 1993 session. At that time these statutes were amended to read or to provide that liens and judgments for child support continue and may be collected for 10 years from the termination of the support obligation. These provisions have been clarified to provide that the collection period is 10 years from the termination of the support obligation "OR 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later." Example - a private attorney goes into court, reduces entire arrears to a judgment of $15,000, representing arrears owed for last nine years. That entire obligation may be collected for ten years from entry of that judgment, as the regular judgment statute of limitations has always provided. Without the change some attorneys have wondered whether their efforts to reduce the debt to judgment are worthless because due to the wording of the statute, they might only have 10 years from each monthly payment due, regardless of the entry of the lump-sum judgment. This was not the intention of the changes in 1993.

Section **7** would allow an obligee to retain amounts collected from the obligor through income withholding, which are in excess of the amount owed for that month, if the withholding is the result of a payor annualizing the withholding. The overwithheld amount would be applied to the obligor's child support obligation for the next month. Right now, we are required to return excess monies to the obligor which causes a disruption in regular child support to the obligee.

Section **8** clarifies that the definition of support order in MCA 40-5-201 includes money ordered for the payment of medical and health needs of a child, child care, transportation and other related expenses and costs specific to the needs of the child.

Section **9** expands the CSED's ability to enforce an order for medical and health needs of a child.

Sections **11 & 13** clarify that when withholding is annualized, the amount deducted each pay period must be sufficient to pay all installments within a twelve month period.

Section **12** clarifies the circumstances under which income withholding will be initiated or continued pending a hearing on an income withholding action.

Section **14** clarifies the responsibilities of the public assistance recipient in notifying the CSED of any action concerning the support obligation.

Section **15** adds a provision to the Uniform Interstate Family Support Act, adopted by this state in 1993. The provision was inadvertently left out of the proposal last session. The language clarifies, that, when an amount is collected and credited for a particular period pursuant to a support order issued by a tribunal of another state, it must be credited against the amount accruing or accrued for the same period under a support order that is issued by a tribunal of this state.

Thank you for your consideration of this legislation.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 1/9/95
SB NO. 29

Department of

Social and Rehabilitation Services

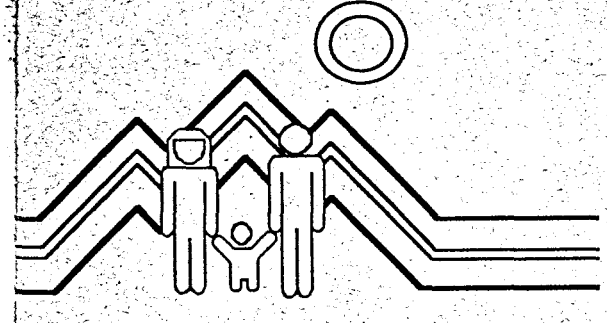
Program Descriptions

January 1995

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

(brochure)

Peter S. Blouke, PhD
Director



DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES

MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

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SENATE COMMITTEE
EXHIBIT NO. 3
DATE 1/9/95
BILL NO. 29

Senate Bill 29
Sponsored by Senator Sue Bartlett
Written Testimony of Peter S. Blouke, PhD, Director
Department of Social and Rehabilitation Services

The Department of Social and Rehabilitation Services, Child Support Enforcement Division currently handles over 42,000 child support cases, with the caseload increasing at the rate of approximately 300 cases per month.

The SRS/CSED's primary mission is to ensure that children receive the monetary support that is rightfully and legally theirs by locating absent parents, establishing paternity in out-of-wedlock births, establishing, enforcing and modifying child support orders, and collecting and distributing child support monies to the families to which they belong. As the caseload and the public's need for SRS/CSED services continues to grow, the department is continually searching for methods of more efficient division operation while, at the same time, serving and satisfying the needs of its constituents.

With this goal in mind, the department has proposed SB29 to assist in enhancing the efficiency and effectiveness of the state Child Support Enforcement Program.

Thank you for your consideration of this legislation.

Submitted by: Peter S. Blouke
Peter S. Blouke, PhD, Director
Department of Social and
Rehabilitation Services

DATE 1-9-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 29

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Mary Ann Wellbank	SRS - Child Support	SB29	✓	
Kate Cholewa	MT Womens Lobby	SB29	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 20, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: Rep. Chris Ahner
Vice Chair Diana Wyatt

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 1, SB 10, HB 160, HB 161
Executive Action:	SB 1 BE CONCURRED IN
	SB 10 BE CONCURRED IN
	SB 26 BE CONCURRED IN

{Tape: 1; Side: A}

HEARING ON SB 1

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, described SB 1 as the code commissioner bill which deals with items in the code which have either been declared unconstitutional or for some reason void by Supreme Court contradictions in terms or information. These items have been reviewed thoroughly by the agencies of government that they may affect before they are put into the bill.

Proponents' Testimony:

Greg Petesch, Code Commissioner, Legislative Council, described how the bill was prepared to remove any controversy from the bill. He then highlighted the provisions of the bill and explained the reasons for them to dispel any questions as to their appropriate inclusion in the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BRAD MOLNAR asked about HB 632 from the last legislative session which related to youth for out-of-state placement which through codification was combined with another bill. Therefore, the lines of supervision and rule making authority between the Department of Corrections and Human Services and the Department of Family Services had become unclear. He wanted to know if that was being addressed in SB 1.

Mr. Petesch said it was not. The bills themselves directed the placement of those statutes and in order to change that, which is a substantive change, those agencies should provide the impetus for that change.

REP. MOLNAR asked what that impetus would be.

Mr. Petesch said that it takes legislation to do it.

REP. DEB KOTTEL asked if the dangerous drug tax repealer went all the way to the U. S. Supreme Court.

Mr. Petesch said that the Montana Supreme Court upheld it and the U. S. Supreme Court declared it unconstitutional.

Closing by Sponsor:

SEN. GAGE said **REP. MENAHAN** would carry the bill.

HEARING ON SB 10

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, brought SB 10 saying that it originated in Glacier County which is part of his senate district. The intent is to grant the state the right to a jury trial in all felony and misdemeanor cases in all courts.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, appeared in support of SB 10. The bill results from a 1993 Supreme Court case, State ex rel Nelson v. District Court. **EXHIBIT 1**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. WILLIAM BOHARSKI wondered if there were other sections of the statutes which might address the same thing where the losing party or a defendant is required to pay court fees for a jury trial requested by the state.

Mr. Connor said he was not familiar with any legislation being drafted to that effect. He said the practice is not uncommon in civil cases but he had never had a criminal case where the defendant was assessed jury costs. He believed that there are statutes which allow various costs to be assessed against the defendant, but the bottom line is the ability to pay. No sanctions can be imposed on a defendant for not paying because of inability to pay.

REP. BOHARSKI asked if there were cases in criminal law where the defendant can be required to pay some of the court costs and if it is possible that the state would require a jury trial and if the defendant lost, the defendant could be required to pay the court costs assuming they have the money.

Mr. Connor said he thought that was correct.

REP. KOTTEL wanted to know if there were other states which gives the state in a criminal trial the right to demand a jury trial over the objection of the defendant.

Mr. Connor said he believed that was discussed in the Nelson case. He said that basically there is a split of authority in that some jurisdictions say only the court can allow a waiver of jury trial and some say that only the defendant and some say both the defendant and the state. His recall of the language of the decision is that there is no clear majority.

REP. KOTTEL asked if he was referring to the Montana Supreme Court or to the U. S. Supreme Court.

Mr. Connor replied, "The Montana Supreme Court."

REP. KOTTEL asked if there is a U. S. Supreme Court ruling on this issue.

Mr. Connor did not believe there is. This is based on Montana State Constitutional principles, not U. S. Supreme Court principles.

Closing by Sponsor:

SEN GAGE pointed out that this deals only with criminal cases. There was some concern about this being a big government bill. These are cases where the people are being represented in court with regard to persons who have been accused of violations of state law. The intent is to level the playing field.

{Tape: 1; Side: A; Approx. Counter: 30.6.}

HEARING ON HB 161

Opening Statement by Sponsor:

REP. AUBYN CURTISS, HD 81, said HB 161 is designed to strengthen the law against sexual abuse of children. The most significant change is that by virtue of the language it changes the offense for possession from a misdemeanor to a felony.

Proponents' Testimony:

Dallas Erickson, Montana Citizens for Decency through Law, said that when the law was passed two years ago, the penalty for possession was changed from a felony to a misdemeanor. Since it was passed he knew of two cases of possession of child pornography. He also talked about national cases involving child pornography. He said that today the material is underground and pedophiles are the ones who possess it and he discussed the studies which demonstrate how this material is used to seduce children as well as to blackmail children and for personal sexual arousal. He cited a Supreme Court ruling in a New York case which occurred because of the existence of child pornography.

{Tape: 1; Side: A; Approx. Counter: 39.1}

Sharon Bakerson, Majority Against Child Molestation (MACeM), reported they had found that 80% of child molesters include pornography as part of the molestation process. It is almost impossible to get a child molestation case into a county court. Therefore, this bill is important.

John Connor, Montana County Attorneys Association, told the committee that it has generally been the position of the association that matters now being requested for enhanced penalties are within the authority of the legislature to decide and they will abide by those decision. They are generally in favor of strengthening laws relating to crimes against children. Crimes against children are difficult to prove, they are most often done in secret and always involve trauma beyond the actual commission of the crime. He has learned in his experience with crimes of this nature that people who commit the kinds of crimes involving children and sex are not able to be cured though they can be contained with appropriate supervision. He also has experience which says that those people very frequently possess pornographic material involving children engaged in sexual acts so much so that search warrants are issued to look for that type of material in investigation of these cases. The value of this bill extends beyond imprisonment to extended supervision of those defendants.

Arlette Randash, Eagle Forum, submitted written testimony in support of HB 161. **EXHIBIT 2**

Sharon Hoff, Executive Director, Montana Catholic Conference, spoke in support of HB 161 and submitted a portion of a document, *Putting Children and Families First,* written by U. S. Catholic Bishops Conference. **EXHIBIT 3**

Ken Moore, Chair, Montana Religious Legislative Coalition and Montana Association of Churches, said recently he was stunned to find that the largest clients for the sales of computers in San Francisco is the pornography industry. He believes that the impact on our communities is going to be very great. The organization he represents is concerned that children be protected from exploitation and abuse especially those which would impair the healthy development and growth of children.

Laurie Koutnik, Executive Director, Christian Coalition of Montana, rose in support of HB 161 and submitted her written testimony. **EXHIBIT 4**

<u>Opponents' Testimony</u>:

Scott Crichton, Executive Director, American Civil Liberties Union (ACLU), asked questions for the purpose of scrutiny between the real deterrents and real children as opposed to some of the new language on line 22 which raises questions for civil libertarians. It seemed to him as the bill was written literary classics such as *Lolita, Romeo and Juliet* and others could be included since they show in print or visual medium children engaged in sexual conduct. He felt that the age of children it refers to is unclear and that the intent should be described with more precise language on line 22 which would exempt work of literary or artistic merit. He said that the court in the Fervor case said a clear distinction needed to be made between an actual

child and the printed word on the printed page. He said there are some societies which outlaw drawing or painting anybody who is a minor and there needs to be some clarity whether this is the intent of this bill as well.

Informational Testimony:

EXHIBITS 5 and 6 are submitted for informational testimony in support of HB 161.

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Counter: 58.8}

REP. KOTTEL asked **Mr. Connor** to speak to the issue of computer images and possession of pornographic material.

Mr. Connor said that in any crime there must be evidence which is proof of guilt beyond reasonable doubt. He agreed with the assessment of the problem with computer images which have not been printed out and said he would be willing to work with the committee to amend the bill to address that problem. He referred to the definition of sexual conduct in 45-5-620, MCA. The bill last session changed the wording from "contact" to "conduct."

REP. KOTTEL referred to the same section of the code and pointed out that the wording does not include computer imaging. She suggested amending that section to include computer imaging.

Mr. Connor agreed to including the words, "electronic transmission."

REP. KOTTEL thought the medium of telephone "sex talk" should also be included.

Mr. Connor said that 45-5-625(1)(c), MCA, contemplates some kind of communication between the prospective defendant and the child.

REP. KOTTEL asked if his judgment was that they could prosecute an adult who engages in phone sex with a minor under that section.

Mr. Connor replied that they could, but how to prove it would be another thing without a recording of the conversation.

REP. KOTTEL said subsections (d), (e), (f), and (g) were under the section on sexual abuse of children and not under its own section in terms of possession. She posed the problem that it would be difficult to prove the person in the photo was a minor and not a young adult who looks younger. She said this would set it up so that it must be proven that the photograph is actually a minor because of situations where the material is imported from another state and also through the passage of time as well as the difficulty in locating the subject shown in the

photograph. With this section under child abuse, the burden of proof is that it was indeed a child rather than putting this section under the possession of obscene material which purports to have an adult engaging in sex with a child.

Mr. Connor said that it goes the way of the evidence. The prosecutor and the jury must decide on the weight of the evidence whether in their minds the subject was indeed a child. It is not necessary to bring the subject to the court. In Montana a child is anyone under the age of 18. If there were any question of the age, he would not file a charge. As a prosecutor, he is ethically obligated not to pursue a criminal charge unless he believes a conviction can be obtained. Most of what he has seen as evidence involves children six to eight years old.

REP. KOTTEL referred to the testimony of **Mr. Crichton** in saying that she did not believe the intent was to ban literature, yet technically the possession of Shakespeare's *Romeo and Juliet* would be considered pornographic as this bill is written.

Mr. Connor replied he didn't think this bill addressed a book with a narrative discussion. Instead it was a description of being engaged in sex acts as opposed to actually being engaged. The intent is to say that you can't possess photographs which depict actual sex acts involving children as opposed to narrative description in literature.

REP. CLIFF TREXLER shared that next to his business there is a one-hour photo lab who's owner wanted to know his liability if someone brought pornographic film involving children to his lab to be processed.

{Tape: 1; Side: A; Approx. Counter: 69.3}

Mr. Connor spoke to that in terms of criminal prosecution. The person processing the film is not possessing it within the definition of knowingly possessing it for this purpose, so that they are not committing a criminal act. He does not know of any law that requires them to report suspected child abuse. He did not know what civil liabilities they might have. Usually this type of material is not developed locally and there is a sophisticated method of distribution.

REP. MOLNAR asked **Mr. Crichton** if he had any written amendments which would clarify age or the other issues he had testified to would present problems for civil libertarians.

Mr. Crichton said he did not. He said that he would talk with his advisory committee to see if there were some suggestions. He interjected that this proposed legislation could also apply to some sex education programs.

REP. MOLNAR asked if he would be willing to bring forward amendments to the committee to consider.

Mr. Crichton said that if the advisory committee thought it was within their ability to respond with written language, he would share it with the committee.

REP. LOREN SOFT believed there were statutes on the books which compel adults to report any child abuse. He assumed that would apply to the photo developer.

Mr. Connor responded that under title 41 there is a statute which delineates who is obligated by law to report suspected abuse. He did not believe that there is a general reporting obligation while there are specifics.

Closing by Sponsor:

REP. CURTISS directed the committee to page 2, lines 9 and 10, where the language addresses the concern about the sex education programs. She recalled hearing much about poor law enforcement regarding obscenity and pornography and submitted that much of that could be cured relative to child pornography if this change were adopted. Only by providing strong deterrents are those persons in our society who have no qualms about preying on the innocent for financial gain going to be stopped.

{Tape: 1; Side: B}

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR SHIELL ANDERSON.**

EXECUTIVE ACTION ON SB 26

Motion: **REP. MOLNAR MOVED SB 26 BE CONCURRED IN.**

Discussion: **REP. MOLNAR** said he believed this was a reasonable solution and could not see any problem with this legislation.

Vote: Motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 1

Motion: **REP. BILL CAREY MOVED SB 1 BE CONCURRED IN.**

Discussion: **REP. DUANE GRIMES** pointed out to the committee that past review of this bill which is proposed every session has caused the committee to get bogged down. He especially remembered the committee's past involvement with the issues in section 15 of the bill.

REP. CURTISS asked if this section could be segregated out by a motion for the committee to address.

VICE CHAIR ANDERSON said a motion would be in order but he did not believe **REP. GRIMES** thought it was defendable to leave that section in.

REP. GRIMES said that was correct, and that the committee would have to write a whole new law which could be done, but there was not time to do it now but it could be done in a future session.

REP. CURTISS asked if there would be any harm done if this section were left in the statutes until the next session of the legislature.

Mr. MacMaster answered there he didn't think there would be, but he agreed with **Mr. Petesch** that the U. S. Supreme Court saw the law as unconstitutional on the federal double jeopardy principles. If that is the case, there is little or nothing in the law that could be saved since it could not be enforced. It would leave a law on the books in title 15 that is unenforceable. He added that there is a bill in the Senate which is looking at rewriting the drug tax law.

REP. GRIMES didn't think it would further the integrity of the committee to throw this into a conference committee or to go on the floor with anything different in this bill.

REP. MOLNAR believed that they should be able to go to the code books and know that what is being read and quoted is accurate and constitutional and to that end, he felt that the committee needed to leave the bill as is.

Vote: The motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 10

Motion: **REP. DANIEL MC GEE MOVED SB 10 BE CONCURRED IN.**

Discussion: **REP. LINDA MC CULLOCH** asked if this would have the effect of passing down an unfunded mandate to the counties.

REP. MC GEE said this would not change who pays for a jury, but it just changes who can argue whether or not there is going to be a jury.

REP. MC CULLOCH replied that with this bill the state could request a jury and therefore there might be a cost incurred.

REP. MC GEE said that actually the state did have a say in the Constitution, but what happened was this particular legislation usurped the state's Constitutional right.

Vote: Motion carried unanimously by voice vote.

CHAIRMAN CLARK reassumed the chair.

{Tape: 1; Side: B; Approx. Counter: 17.4}

HEARING ON HB 160

Opening Statement by Sponsor:

REP. AUBYN CURTISS, HD 81, said that it is the perception of many people that 10th Amendment and state sovereignty rights are fast becoming the issues of the nineties. The bill is before the committee because of the growing concerns citizens nationwide have about a government which looks away while its agents abuse the privileges of office. For the first time in interviewing constituents, she heard Montanans admitting fear of unwarranted, arbitrary actions of our own government.

Proponents' Testimony:

REP. MATT BRAINARD, HD 62, presented written testimony in support of HB 160. **EXHIBIT 7**

Gary Marbut, Montana Shooting Sports Association (MSSA), National Rifle Association of America (NRA), Gun Owners of America (GOA), National Citizen Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association (WMFGA), Big Sky Practical Shooting Club (BSPSC), said these organizations have memberships totaling between 30,000 and 40,000 in Montana. The bill was drafted by the request of MSSA and it is called the Law Enforcement Cooperation Act. Some call it the "No More Wacos Bill." Some federal agencies work well with the local sheriff and others not so well. The purpose of this bill is to require that federal officers obtain written permission of the county sheriff before they do any arrests, searches or seizures in the state of Montana. The purpose of that is to make sure that cooperation happens. In order to ensure that this would be good legislation, the bill includes some exceptions such as if the arrest, search and seizure were to take place on a federal enclave such as Malmstrom Air Force Base or a federal court house. There is an exception if a federal employee witness a crime and has to take immediate action and also if the arrest, search and seizure happens under Montana's close pursuit statute, 46-6-411, MCA, or is done by employees of the border patrol, 46-6-412, MCA. An additional exception if the intended search, seizure and arrest subject is an employee of the country sheriff's office or elected state or federal official. To deal with the potential of a corrupt sheriff, section 1, subsection (e) on page 2 was included.

He evaluated the various federal agent's cooperative efforts with local sheriffs. He also told of other states which are adopting similar laws as well as the introduction of a similar bill in the U. S. Congress. He cited the Randy Weaver case and the Waco case as support of this bill in that the law enforcement officials who were involved with those situations said that had this law been

in effect at the time of those incidents the outcomes would have been dramatically different. He cited other incidents in Montana and elsewhere which have sparked the introduction of this and similar bills around the nation. He said, "Frankly many of the people of Montana are afraid of the federal police and we want to offer them some protection."

He addressed the issue of the constitutionality of this issue regarding the tension between the supremacy clause of the federal Constitution and the 10th Amendment. He pointed out that the 10th Amendment was passed after the supremacy clause and anything that is amendatory has an affect on the law that is before it. There is recognition that the courts are beginning to move in that direction. He cited current cases which will clarify the relationship between the states and the federal government. He felt that it would be litigated but that it has a good chance to pass constitutional muster. He distributed testimony. **EXHIBIT 8**

Jay Printz, Sheriff, Ravalli County, stood in support of this bill. He presented written testimony and elaborated on his experience with federal agencies in his county. **EXHIBIT 9**
He recommended an amendment to section 2, subsection 1, which would consider 46-1-201, item 16, MCA, by striking the words, "who is not designated by Montana law." This would then read, "any federal employee may not make an arrest....."

Gary Hancock, Captain, U. S. Army (retired), strongly supported HB 160. He belongs to a number of veteran's organizations and they all support the government and the Constitution. He and those he talks to consider this a domestic threat and they see no place in a democracy for federal death squads. He declared that there is a great deal of discussion in army reserve units and in national guard units about what an individual soldier would do if they are asked to fire on their own citizens. He said that under the Constitution the sheriff is the only recognized law enforcement officer in this country. He urged support of HB 160. He restated that there is fear of their own government among the people.

John Appelt, Huson, Montana, Citizens to Preserve the Second Amendment, supported previous testimony and said that there is a feeling the government has passed some unconstitutional legislation such as the Brady Bill. He demonstrated the opinion that they are building this country into a police state by presenting a picture of a member of the Multi-jurisdictional Task Force and discussed their activities. **EXHIBIT 10**

Stoney Burk, Choteau, Montana, protested about the 30-minute time restraint on testimony and described his outrage at the activities of the federal agents against citizens of this country. **EXHIBIT 11**

Louis Kelleher, Potomic, Montana, President, Citizens to Preserve the Second Amendment, said the organization has 300 members and

are organized to preserve the Second Amendment to the U. S. Constitution. He wanted to impress on the committee that they are fearful of the federal government which they believe gives them due cause for that fear. He discussed Waco and said he had documentation that proves it was inevitable and handled in such a way to provoke fear and concern.

CHAIRMAN CLARK said the time for proponents had expired for testimony. If there was time remaining after opponents testified, he would entertain the possibility of further proponent testimony. Further proponents were asked to give a name and a declaration of their support at this time.

Walter Hammermeister, Conrad, Montana, rose in support of HB 160 and submitted written testimony. **EXHIBITS 12 AND 13**

Paul Stramer, as a father of eight children, was in support of HB 160.

Alfred "Bud" Elwell, Western Collectors Society of Montana, said they support HB 160.

"Red" Beckman, Montanans for Constitutional Government, declared his support of HB 160.

Richard Overcast, Missoula, Montana, said he was for the bill.

Kim Liles, Missoula, Montana, submitted written testimony in lieu of taking up the committee's time. **EXHIBIT 14**

George Thompson, Missoula, Montana, is in agreement with HB 160.

Phillip Sanders, Huson, Montana, supports this bill.

John Meyers, Missoula, Montana, strongly supports this bill.

Art Fredrickson, Helena, Montana, totally supports the bill.

William C. Hollenbaugh, Missoula, Montana, strongly supports the bill and asked the committee to pass the bill.

Tom Cullin, Helena, Montana, also supported the bill.

Opponents' Testimony:

Bill Strizich, appeared as a private citizen although he is employed by a federal agency as a law enforcement officer. He viewed this piece of legislation as one of the most frivolous he had ever seen. He felt it was an attempt to overturn a couple of hundred years of established law. He said that federal agents are completely unable to function without the advice and cooperation of local law enforcement. He acknowledged tragedies that have occurred from poor judgment and ill conceived tactics, but felt this bill was a simplistic solution.

{Tape: 1; Side: B; Approx. Counter: 58.2}

Pam Egan, Montana Family Union, spoke in opposition to HB 160. They had concerns about the bill's constitutionality. It seemed to them to be an attempt to direct the federal government by the state. She believed the federal government is not an agent of the state but in fact it is an agent of the people of the United States. She echoed the previous opponent's testimony that any problems should be addressed at the federal level. She felt testimony of proponents included serious attacks on the federal government which disturbed her.

Christine Kaufman, Human Rights Network, said that they have many local groups around the state which they try to help respond to extremist activities that are increasing in their areas. She said that this bill would play into paranoid conspiracy ideas about the federal government being our enemy. She urged caution in consideration of this bill.

CHAIRMAN CLARK, without objection from the opponents, gave the remaining time to the proponents who had not spoken.

Mr. Hammermeister gave some background for his testimony. His written testimony was submitted previously.

{Tape: 2; Side: A}

Mr. Stramer, Eureka, Montana, said that he hears concern from people in all walks of life about the current trend by federal agents especially since he lives so close to the location of the Weaver incident. He spoke with great emotion about the concern and fear of his family and community. He read from a document from the Headquarters, Department of the Army, Document #SM41-10, Civil Affairs Operations which supplied information which supports his point of view. He felt they only want government agents to obey the law so that the people can have order.

{Tape: 2; Side: A; Approx. Counter: 8.5; Comments: Exact quotations from the above document can be reviewed on tape.}

Mr. Beckman, said that if this had been the law in the State of Montana, it would have saved the state and local governments a lot of money because people at the grassroots level have been developing a knowledge of the law and are beginning to bring lawsuits against government entities for violations of the law. He cited his own lawsuit against Yellowstone County.

CHAIRMAN CLARK reminded **Mr. Beckman** to stay to the subject matter of the bill.

Mr. Elwell, Montana Weapons Collectors Society, suggested that if the committee members really want to know the pulse and attitude of the people and the history of what they are going through, that they attend a gun show.

CHAIRMAN CLARK thanked the opponents for relinquishing their remaining time to the proponents to testify.

Informational Testimony:

EXHIBITS 15, 16 AND 17 are submitted as informational testimony for HB 160.

Questions From Committee Members and Responses:

REP. KOTTEL mentioned the testimony about a conspiracy and the New World Order and asked if that was the Jewish conspiracy in terms of the world order.

Mr. Stramer said he would not put that on any particular race. He said he was not a racist but that he is a Catholic. He said that it is the general consensus of the feelings of the common citizens who are his customers that there exists some kind of agreement or conspiracy of long standing that is trying to see our national sovereignty placed under the mantle of the United Nations and subject it by treaty to the United Nations Charter rather than the U. S. Constitution. The consensus in his district is that the U. S. Constitution is the supreme law of the land and that is all they are trying to enforce. They object to the various police actions around the world and believe if they can do it there, they can do it here.

REP. KOTTEL asked **Mr. Stramer** if he was a "Freeman."

Mr. Stramer answered, "No, Ma'am, I am a law abiding, tax paying citizen." He said that was not to say that Freemen are not law abiding. He said he has a social security number and a driver's license and insurance and files with the IRS every year.

REP. KOTTEL asked about the 48-hour rule contained in the bill.

Mr. Strizich said the real key was that the whole thing is frivolous and to talk about the specifics becomes self-defeating. Nothing replaces common courtesy, good manners and basic cooperation among all the agencies to get things done.

REP. KOTTEL asked if it was true under 42 USC 1983 that there are remedies a citizen could use if a federal officer under color or law should violate a citizen's civil rights.

Mr. Strizich said, "Absolutely....."

REP. KOTTEL asked if he had any idea of the cost of taking a case all the way through the U. S. Supreme Court.

Mr. Strizich said he had no idea.

REP. KOTTEL asked **Mr. Marbut** if he had said that a similar bill was introduced in the state of Texas, but that it had not been passed.

Mr. Marbut said that was correct.

REP. KOTTEL asked if in fact any state had passed such a bill.

Mr. Marbut answered that to the best of his knowledge, this bill had not yet been approved by any state.

REP. MC GEE asked for further information about the incident which occurred near Florence, Montana, which involved federal officers (IRS) and if **Mr. Strizich** was aware of that situation.

Mr. Strizich said he was not aware of it with any detail. He said if he were involved with an agency such as that one, and they carried out an operation in that fashion, "heads would roll." He reiterated this law would not prevent bad manners and bad practice.

REP. MC GEE asked what the common practice in Montana is for federal agencies contacting local law enforcement.

Mr. Strizich said he could not speak for any federal agency. But he could say the general policy of the agency he is familiar with is that they don't go anywhere without fully informing local authorities unless the local authority is the subject of investigation.

REP. MC GEE inquired if he was saying that agencies other than the one he is part of do not practice in that way though he could not say that they do act in that fashion.

Mr. Strizich's assumption would be that if they intend to get things done, they need to practice that way, though he did say there might be an instance in which his agency would go into a jurisdiction within a few hours' notice because they would be after a fugitive that is dangerous. He believed it is not practical to use the 48-hour notice and it won't work.

Mr. Strizich declared he was not appearing as a U. S. Marshall, that he could not do that, but he was appearing as a private citizen and former legislator and a person with some expertise in the justice system over the last 20 years.

REP. MOLNAR questioned **Mr. Strizich** about his knowledge of **Mr. Beckman's** case.

Mr. Strizich answered, "Some."

REP. MOLNAR asked if he agreed it was played out in the papers for a week that he was demanding a jury trial.

Mr. Strizich believed he had probably asked for a jury trial. He said that **Mr. Beckman's** case had little to do with this bill.

REP. MOLNAR asked if it is part of the U. S. Marshall's job to protect and defend the constitutional rights of U. S. Citizens.

Mr. Strizich answered, "Yes, sir."

REP. MOLNAR read part of the U. S. Constitution from the Seventh Amendment, "In suits of common law, with (sic) a value in controversy shall exceed $20, the right of trial by jury shall be preserved and no fact tried by a jury shall otherwise be re-examined by any court of the United States than according to the rules of common law." He asked if **Mr. Strizich** ever got the jury trial that he admitted he had asked for and is indeed guaranteed under the U. S. Constitution.

Mr. Strizich said he only knew what he read in the newspaper.

REP. MOLNAR asked if he would tell what he knows.

Mr. Strizich said that he knew that it was not under federal jurisdiction.

REP. MOLNAR asked if **Mr. Strizich's** agency made any attempt to defend his right to a jury trial before his property was seized and destroyed. As opposed to federal agencies being held at bay by the county sheriff's, in this case, **REP. MOLNAR,** suggested perhaps the county sheriff should have been held at bay by federal agencies. He re-asked if at any time during the 24 hours it took between the seizure and the destruction there was an attempt to defend his right to a jury trial.

Mr. Strizich said he guessed what was being asked was if there was sufficient complaint before either the U. S. Attorney or some other federal authority which would have brought some intercession by a federal agency. To his knowledge he did not believe either **Mr. Beckman** or any of his agents or attorneys had asked for that intercession. His knowledge of **Mr. Beckman's** plight told him that many times during his case he had several opportunities to bring other federal agencies in or to take advantage of the IRS itself but he chose not to. Had there been a complaint filed with the U. S. Attorney or another investigative authority that would have brought them into the situation certainly they would have been standing there.

REP. MOLNAR asked if he ascertained before law enforcement can move to intercede on what they consider to be either unconstitutional or illegal action, someone somewhere has to file a complaint.

Mr. Strizich replied that in terms of what he was talking about, he believed it to be so.

REP. MOLNAR asked if a U. S. Marshall sees a violation of either federal or state statute or what would be considered to be a violation of rights, they would not step in until somebody filed some sort of motion.

Mr. Strizich answered, "Certainly not, I am not saying that."

REP. KOTTEL asked if it was true that under the U. S. Constitution, Amendment 7, for the right to a jury trial for cases over $20 at common law that there is a distinction in our system between cases that arise out of equity and the 1972 U. S. Supreme Court case of Ross vs Bernard made a distinction that cases that brought out of equity have no right to a jury trial. And so it is not clear cut whether someone has a right to a jury trial in all cases of the United States, but only those that historically come from our common law system and not our system of equity.

Mr. Strizich indicated that was true.

REP. TREXLER asked **Mr. Printz** about the conditions he discovered at his arrival at the scene of the incident he described in previous testimony and any personal sense of anxiety of danger by not knowing who the players were in the incident.

Mr. Printz replied that there was anxiety because there was no knowledge of the circumstances, the players and the plan of action. He referred to **EXHIBIT 9** to substantiate his reply.

REP. TREXLER referred to **Mr. Strizich's** testimony that "heads would roll" in such a circumstance. He asked if in **Mr. Printz's** opinion if any "heads had rolled."

Mr. Printz answered this was not the Marshall service, but as far as he knew "heads haven't even been nodded."

{Tape: 2; Side: A; Approx. Counter: 35.0}

REP. ANDERSON spoke from page 3, lines 6 - 9, which says, "the county attorney has no discretion not to prosecute once a claim to violation of [section 2] has been made by the county sheriff or designee of the sheriff, and failure to abide by this mandate subjects the county attorney to recall....." Referring to **Mr. Connor's** testimony about the ethical mandate to prosecute only those cases in which the county attorney believes a conviction is obtainable, he asked if this wording would eliminate the county attorney's ability to determine whether or not he has a winnable case.

Mr. Marbut said it had been his experience there are some kinds of cases where county attorneys have at times abused prosecutorial discretion. He said it would not be fatal to the bill to remove that section, but that it is healthy for the bill to leave it in.

REP. ANDERSON said that the county attorney has the nudge of the local voters in the next election asked if that would not be enough of an encouragement to do the job.

Mr. Marbut believed that would help, although he found it was difficult to find attorneys to run against an established county attorney.

REP. ANDERSON referred to page 2, line 30 and compared it to the offense of kidnapping. He said it occurred to him that there could be an attempted arrest that would have none of the elements of a kidnapping offense and would be without a remedy in that situation.

Mr. Marbut answered according to his understanding that there are many criminal offenses under the law where an attempted offense is similar to the offense itself and carries some of the same penalties under the law. He said if there was a conflict there, he had no objection to the committee cleaning up that particular language.

REP. ANDERSON said the same problem exists for the language on page 3, line 1.

Mr. Marbut concurred that was the same issue.

REP. ANDERSON referred to the Berger case and asked if local authorities were consulted before the federal people entered the Berger residence.

Mr. Strizich said he had no knowledge of that.

REP. SOFT was curious why no one from the federal agencies were present to testify on this bill.

Mr. Strizich replied that in order for a federal employee to speak as a proponent or opponent on any kind of legislation at the state legislature would take a couple of weeks to get the permission to speak for that agency. The other reason is time and he only happened to be passing through here today on other matters and his personal interest drew him to the meeting.

REP. SOFT asked if **Mr. Strizich** felt this bill is of great significance to the federal agencies.

Mr. Strizich said that if this bill were to pass it would be frivolous, it goes nowhere and does nothing. He did not feel this was a problem in this state nor that this was the proper venue to deal with the problem.

REP. ELLEN BERGMAN asked if the case in Florence was like the one in Jordan.

Mr. Printz was only familiar with the one in Jordan by what he had read in the newspaper. He felt it was unfortunate that the sheriff of that county had not come to testify on that issue.

REP. JOAN HURDLE commented on **Mr. Stramer's** use of the word, "neo-communist" and asked if his concern about federal agency intimidation of people would extend to the excesses of McCarthyism or did he feel the governmental intimidation was justified in those cases.

Mr. Stramer believed in the cases of the McCarthy era due process of law was followed. He did not believe standard operating procedure includes percussion grenade and automatic weapons being fired and that people in the recent situations referred to in testimony could have been arrested under different circumstances and bloodshed avoided. In his mind that simplified the issue.

{Tape: 2; Side: A; Approx. Counter: 47.0}

Closing by Sponsor:

REP. CURTISS commented on the testimony which called the bill frivolous and emotional. She said that red-blooded Americans tend to become emotional when they feel that their freedoms and rights under the Constitution are being infringed upon. She read from Article 4. She reiterated and summarized previous testimony and the credibility of proponents. She told the committee that they have a compelling responsibility to protect the interests of their constituents and to alleviate the concerns that people are expressing. In the failure to pass this bill, she admonished the committee to assess the jeopardy in which they all may stand.

CHAIRMAN CLARK expressed thanks to the cooperation of the opponents in their generosity and everyone for their conduct.

Motion: **REP. MC GEE MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on two 90-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 11:45 AM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/26/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority		✓	
Rep. Chris Ahner		✓	
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ late		
Rep. Debbie Shea	✓ late		
Rep. Liz Smith	✓ late		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 26** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Swanson

Committee Vote:
Yes 16, No 0.

171518SC.Hdh

HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 1** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Menahan

DS.

Committee Vote:
Yes 15, No 0.

171514SC.Hdh

HOUSE STANDING COMMITTEE REPORT

January 20, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 10** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Anderson

DS

Committee Vote:
Yes 16, No 0.

171517SC.Hdh

EXHIBIT 1
DATE 1/20/95
SB 10

SENATE BILL 10

Senate Bill 10 was requested by the Montana County Attorneys Association to address a problem arising from a 1993 Montana Supreme Court case.

The case, State ex rel Nelson v. District Court, originated in Glacier County. It involved the prosecution of a defendant for felony assault, resisting arrest and obstructing a peace officer. The defendant decided to waive jury trial, reasoning apparently, that he would have a better chance of acquittal if the case were tried by the court without a jury. The prosecution objected and insisted on trying the case before a jury. The district court ruled that the state had no say in the matter of whether a jury would be waived based on current statutes. The matter was then presented to the Montana Supreme Court.

The Supreme Court held, in effect, that Article II, §§ 24 and 26 of the Montana Constitution guarantee the defendant in a criminal case a right to trial by jury, but that § 26 also allows the legislature to provide a procedure for waiving this right. The court concluded that only the defendant is allowed to waive a jury and be tried by the court because of the language of Mont. Code Ann. § 46-16-110(3). So, the effect is that if the defendant, for whatever reason, decides that it would be to his or her tactical advantage to waive a jury, under current law, the prosecution cannot insist on having the case tried by a jury; it must defer to the defendant's wishes.

This situation is the result of a statutory change that occurred in 1991. Prior to that time, and since 1973, the statutory language required that both the state and the defendant had to agree to waive jury trial. However, when the new criminal code was adopted in 1991, which was a substantially long bill with numerous changes, the language was changed to allow only the defendant to waive the jury.

Although cases are rare where the defendant wants to waive a jury and the prosecution does not, they do occur occasionally in situations where the defendant believes that there may be a tactical advantage to waiving the jury, such as, for example, when a judge may be predisposed for whatever reason to the defendant's position. Examples were given in committee testimony of a judge's dislike for dangerous drug laws and inclination to find flaws in cases involving prosecution of dangerous drug cases. In this type of situation, prosecutors believe that the ultimate decision of guilt or innocence should be left to the people in the form of the jury.

This bill does not take away any right the defendant has. A defendant has a constitutional right to trial by jury but does not have a corresponding constitutional right to waive the jury. The case referenced above recognizes that the legislature may determine how and by whom the right will be waived. In this situation, the Montana county attorneys believe that this bill simply evens out the playing field by giving both sides a say in whether there will be a waiver of trial by jury.

EXHIBIT 1
DATE 1-20-95
SB 10

Although the statutory change proposed in section 2 is not addressed in the case, this provision was changed to make the practice consistent for both district and justice courts since the language in section 2 of the bill relates to justice of the peace courts.

John Connor
Assistant Attorney General

EXHIBIT 2
DATE 1/20/95
HB 161

January 20, 1995

House Judiciary Committee
HB 161
Arlette Randash / Eagle Forum

In the Ferber case the Court recognized that it may be difficult, it not impossible, to stop the sexual exploitation of children by pursuing only those who produce child pornography. Citing the clandestine nature of child pornography the Court said "the only practical method of law enforcement may be to 'dry up the market' for this material." The prohibition of the mere possession of child pornography is a necessary incident to 'drying up the market' for a product found to be extremely harmful to the youth of our nation. These laws are entirely consistent with other court decisions and are very different from other "obscenity" decisions because of the nature of little children damaged in the production of pornography.

As has been stated by other proponents this is an invisible crime because the distribution of child porn is underground. However, there are over 350 child pornography magazines published in the United States. And even though this industry tends to be invisible its effect is not. Montana has seen several pedophile cases in recent years. People who use child porn usually act their deviancy out.

Because of these facts and because this law would give teeth and tracking ability through increased incarceration time and penalties I urge a 'do pass' on HB 161.

Sharon Hoff MT Catholic Conf. Proponents HB 161 EXHIBIT 3 DATE 1/20/95 HB 161

mented the needs of children and the failures of our society to meet those needs. And increasingly, experts and organizations including marriage and family counselors have shown signs of rethinking the positive values of stable marriage, the human costs of easy divorce laws, the social costs of excessive individualism, and the consequences of economic pressures on families.

We welcome and support renewed efforts of the helping professions to promote the reconciliation of spouse as a viable alternative to divorce. We acknowledge the significant changes in family life; we affirm the major contributions of women in the work force; and we support and applaud the often heroic efforts of single-parent families. We also emphasize the value of parents staying together and sacrificing to raise children. Children generally do best when they have the love and support – personal and material – of both their parents.

Many single-parent families overcome huge economic and social obstacles, but others are overwhelmed by these forces. Government efforts need to help families stay together and overcome the many pressures that pull families apart. We owe special help to those parents – mothers or fathers – who face family life alone, knowing how discrimination and other forces make a difficult job even tougher. This is especially true when single parenthood is combined with poverty, as it often is.

A. Protecting the Lives of Children

1. Unborn Children

From conception, unborn children are most at risk from this nation's antilife policy of abortion on demand. The ultimate example of powerlessness is to be destroyed before birth. And a terrible sign of national failure is the implicit suggestion to many women – especially poor women – that they must choose between life for their unborn child and a decent future for themselves and for their families. We need to shape a society where economic and social forces do not leave women facing fundamental questions of life and death alone and isolated without the support of a caring community. We reiterate our strong opposition to abortion and government funding for abortion. We will continue through education to expose the realities of abortion, to promote life-giving alternatives to abortion, and to provide the loving choice of adoption and caring support for pregnant women and mothers and children, especially the poor.

Unborn children are also at risk from AIDS and substance abuse, both of which call for expanded national efforts at education and prevention, the provision of prenatal and other health care, and treatment and rehabilitation of abusers of alcohol and other drugs.

2. Abuse and Neglect

Children are hurt and killed by violence within families. Families are destroyed by verbal, physical, and sexual abuse. These brutal and tragic realities threaten the lives and welfare of millions of children and women. They require education, treatment, and prevention. The family must be a place of safety, not of danger. And society must act to protect children and women from family violence and sexual abuse. Physical and sexual abuse of children constitutes a terrible betrayal of trust, a threat to their emotional and physical health, and a challenge for every institution that serves children. Child pornography represents a particularly terrible threat to children. They serve as subjects in the production of pornography and sex objects for those who make use of pornographic materials. This illegal and immoral use of children for sexual purposes and profit must be confronted and stopped. Pornography demeans women, degrades our society, and destroys the love at the center of human sexuality. We need effective, constitutional remedies which protect children, women, and all of society.

Growing violent abuse and neglect of infants and children have led to families where children are not only rejected but also endangered and to the phenomenon of the "no parent" family. These sad realities have created widespread strains on our child welfare system, including lack of adequate foster homes, inadequate support services, a shortage of trained personnel, inappropriate placements, and a serious absence of preventive services. System-wide reform is called for, including special attention to families where there is substance abuse and families in which children have serious emotional problems.

Parents should not have to worry about losing their jobs when they welcome a new child, nurse a sick spouse, or comfort a dying parent.

The primary goal of reform should be preserving families, wherever possible, through long-term, home-based services and programs designed to meet individual family needs before children's safety is jeopardized. We need far more coordination in the provision of family services, emphasizing prevention and replacing fragmented individual programs with concern for the whole family.

We also support policies which assist families who choose to adopt children or provide loving foster care for children at risk. Special efforts are needed to help minority and older children and children with disabilities find loving and supportive homes. Creative public policy and private action are needed to help every child find a home where his or her unique needs can be met.

B. Economic Help for Families

1. Poverty and Families

Poverty is not merely the lack of adequate financial resources. It often entails a more profound kind of deprivation; a denial of full participation in the economic,

EXHIBIT 4
DATE 1/20/95
HB 161

Mr. Chairman, members of the committee:

For the record, my name is Laurie Koutnik, executive director of Christian Coalition of Montana, the largest grassroots family advocacy organization in our state. I rise to support HB 161, strengthening the law concerning the possession of child pornography from a misdemeanor to a felony offense.

Two years ago when Rep. Jim Rice introduced our current law, it met with overwhelming and unanimous support in both houses. At that time, John Connor, representing the Mt. County Attorneys Ass. testified that this measure was needed because of the strong link between the possession of child pornography and people arrested for child sexual abuse. He has affirmed here yet today the necessity of this measure in the enforcement, prosecution, and tracking of this crime. To be sure we understand what we are dealing with, I would like to read to you exerts from: Lanning K.V., Burgess, A.W.,1989, "Child Pornography and Sex Rings" in Zillmann D. Bryant, J.(Eds.) Pornography Resarch Advances and Policy Consideration. Hillsdale: N.J.: Erlbaum (attached)

Last fall when Christian Coalition of Montana conducted our legislative candidate survey prior to the general election, we presented a statement selection of either "support", "oppose", or "undecided" reponse to this statement: Strengthen the child pornography law as a felony offense. All the respondents regardless of party affiliation, had checked "support"...a 100% agreement.

It was obvious that we all shared the same concern and sentiments on this important issue.

Today, we are here to send a clear message to those who involve themselves in these heinous activities. This offense should never be lightly considered, but rather our childrens' psychological, physical, and emontional well-beings as well as the violation of their innocence is of much greater value then the $500 penalty associated with a misdemeanor offense. There is no value we can place to replace these violations perpetrated against our vulnerable and impressionable youth.

While there are organizations that exists today like NAMBLA, the North American Man Boy Love Ass., whose goal is to repeal laws that prevent men from having sex with boys, we must do all in our power to protect and counter such self- serving,destructive, attitudes. We must work to dry up the market.

With the recent arrests in Billings of a mother taking pictures of her under-age daughter engaging in sexual acts with the mother's boyfriend, and the suicide earlier this week of a man who had been caught soliciting for child pornography, we know the problem is very real. Let us enact a real deterent rather then a slap on the wrist. Won't you join us in the protection of our children by strenghtening this statute? Thank you. Respectfully submitted:

Laurie Koutnik

VI. CHILDREN AND ADOLESCENTS WHO ARE USED TO MAKE PORNOGRAPHY EXPERIENCE ADVERSE ENDURING EFFECTS—ONGOING HARM.

Koop, C. E. (1987). Report of the Surgeon General's Workshop on Pornography and Public Health. America Psychologist, 42 (10); 944-945.

Report of the Surgeon General's Workshop on Pornography and Public Health. (1986) Washington, D. C.: U.S. Public Health Service.

Silbert, M. H. Ch. 3, Handbook.

"Children and adolescents who participate in the production of pornography experience adverse, enduring effects" (p. 11).

"Involvement of children in the production of pornography is a form of sexual exploitation, victimizing vulnerable children and leaving them with the aftermath of this involvement" (p. 11).

"Involvement with pornography does seem to have a place in the dynamics of sexually exploiting children. Pornography has been used by adults to teach children how to perform sexual acts and to legitimize the children's participation by showing pictures of other children who are "enjoying" the activity" (p. 11).

"There is clear evidence that youth involved in the production of pornography are adversely affected by their participation" (p. 21).

Report of the Surgeon General's Workshop, "Pornography and Public Health," Arlington, Virginia. June 22-24, 1986; pp. 11 & 21.

"Child pornography requires a child to be victimized. A child had to be sexually exploited to produce the material. Children used in pornography are desensitized and conditioned to respond as sexual objects. They are frequently ashamed of their portrayal in such material. They must deal with the permanency, longevity, and circulation of such a record of their sexual abuse" (p. 239).

"The follow-up of some of the children who were involved with adults (Burgess, Groth, & McCausland, 1981) indicates post-traumatic stress response, both acute, chronic, and delayed (Burgess, 1984). Prominent features of intrusive thoughts, avoidance behavior, gender identity conflicts, and stylized sexual behavior were noted" (p. 249).

"Child victims frequently have mixed feelings about the discovery of such a sex ring" (p. 250).

"They may be embarrassed about others discovering what they have been doing... It must not be misinterpreted as consent, complicity, or guilt" (p. 250).

"When you recognize the effect and scope of the trauma caused by nonviolent sexual manipulation, the amount of consideration given by the criminal justice system to such offenders simply because they are

nonviolent is baffling. Physically batter a child and you are locked up, but psychologically batter 100 children and you are left on the street because you are nonviolent. The devastation caused by such "nonviolent" victimization is psychological violence of the worst kind" (p. 250).

Lanning, K. V., and Burgess, A. W., (1989). "Child Pornography and Sex Rings." In Zillmann, D. & Bryant, J. (Eds.) Pornography: Research Advances and Policy Considerations. Hillsdale: NJ: Erlbaum.

"In hearings before both Houses of Congress in 1977, witnesses estimated that between 300,000 and 600,000 children were involved in child pornography" (p. 1).

"Clinical studies of children suffering from traumatic sexualization are disturbing. Children experience somatic complaints and sleep disorders, withdraw from other children and adults, and act out what they have been exposed to. These findings are based on the results of convincing long - and short-term clinical studies" (p. 2).

"The first conclusion is painfully obvious: "Children and adolescents who participate in the production of pornography experience adverse, enduring effects." These effects include what is called "traumatic sexualization," which is the result of a child's being coerced into viewing and participating in a broad range of sexual experiences. This experience can produce an obsession with, or aversion to, sexuality and intimacy. The behavioral manifestations in children who participate in pornography production include a range of pathological response such a preoccupation with sexual activity, sexual dysfunction, and phobic reactions to intimacy. These may last a lifetime. The vulnerability of children makes their victimization that much more enduring and devastating" (pp. 1-3).

Mason, James O. M.D., Dr. P.H., Assistant Secretary for Health. "The Harm of Pornography," Address to the Religious Alliance Against Pornography, October 26, 1989; pp. 1-3.

Jan.-Feb. 1992 nambla Vol. 13 No. 1

BULLETIN

VOICE OF THE NORTH A[illegible]MAN/BOY LOVE ASSOCIATION

$3.95

Why does the "No Special Rights" initiative include Pedophiles?
Because the "Gay Rights" movement includes Pedophiles.

The North American Man/Boy Love Association

CONSTITUTION AND POSITION PAPERS

The Constitution was adopted by the membership in December, 1980.

The North American Man/Boy Love Association (NAMBLA) is an organization founded in response to the extreme oppression of men and boys involved in consensual sexual and other relationships with each other. Its membership is open to all individuals sympathetic to man/boy love in particular and sexual freedom in general. NAMBLA is strongly opposed to age-of-consent laws and other restrictions which deny adults and youth the full enjoyment of their bodies and control over their lives. NAMBLA's goal is to end the long-standing oppression of men and boys involved in any mutually consensual relationship by:

1) building a support network for such men and boys;
2) educating the public on the benevolent nature of man/boy love;

Woman admits abuse

12/13/94 IR

By The Billings Gazette

A woman accused of photographing her 12-year-old daughter being sexually assaulted by her live-in boyfriend pleaded guilty Wednesday in District Court as part of a plea bargain with prosecutors.

The Billings woman, whose name The Gazette is withholding to protect the identity of her daughter, pleaded guilty to sexual abuse of children, a felony that carries a maximum possible penalty of 50 years in prison.

In exchange for her plea, the Yellowstone County attorney's office dismissed four counts of sexual intercourse without consent, by accountability, against the woman.

District Court Judge William Speare set sentencing for Feb. 1.

The woman admitted during her court appearance Wednesday that she took pictures of her daughter being assaulted by Todd Anderson, whom she was living with at the time.

A babysitter for the woman last July found several pictures of Anderson and the young girl and notified police. Authorities obtained a search warrant and in addition to the photographs found other pornographic pictures, leather lingerie and books and videotapes depicting incest.

The couple were arrested a few days later in Jordan, where Anderson was working.

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EXHIBIT 5
DATE 1/20/95
HB 161

EXHIBIT 6
DATE 1/20/95
HB 161

Jan.-Feb. 1992 nambla Vol. 13 No. 1

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1) building a support network for such men and boys;
2) educating the public on the benevolent nature of man/boy love;
3) cooperating with the lesbian, gay, and other movements for sexual liberation;
4) supporting the liberation of persons of all ages from sexual prejudice and oppression.

EXHIBIT 7
DATE 1/20/95
HB 160

TESTIMONY

January 20, 1995

PROPONENT AND COSPONSOR

MATT BRAINARD

REPRESENTATIVE, HD #62

In the United States, the government governs by the consent of the governed. Successful law enforcement depends on two things -- first and foremost, good legislation that is supported by the people, and second, enforcement that is seen to be fair and equitable in its administration. Support of law enforcement activity is strongest when it involves locally elected officials who are known and trusted by the community.

This will assist federal law enforcement by assuring citizens that federal officials will act in concert with our locally elected and trusted law enforcement personnel.

Power corrupts and absolute power corrupts absolutely. Our national liberty depends on the dynamic tension between federal, state

and local governments. During the 1950's and 1960's, the federal government took steps to assure that our civil rights were protected down to the local level. Today, it is apparent to me that local government must also work to protect our civil rights even when the federal government is involved.

HB 160 will assist in protecting our civil rights. It will also guarantee better cooperation between local and federal officers because it guarantees communication -- You can't cooperate if you don't know what the other guy is going to do!

One final benefit that I've not mentioned is that local officers generally know the physical layout of the community better than do federal officers. Many people in Montana live at poorly marked addresses -- sometimes there are no maps. By confering with local officers, federal officers may be spared the embarrassment of raiding the wrong dwelling and quite possibly engaging an innocent citizen with deadly force.

HB 160 is good for the people of Montana and it will assist law enforcement officers, both local and federal.

EXHIBIT 8
DATE 1/20/95
HB 160

SPECIAL REPORT
Reprinted from The Gun Owner, published by Gun Owners of America

BATF THUGS STRIKE AGAIN

The lives of Harry and Theresa Lamplugh were turned upside down on the morning of May 25, 1994. Early that day, fifteen to twenty armed men and women burst into their rural Pennsylvania home. Under the threat of violence, the Lamplughs cooperated with the intruders completely as they opened safes, locks and cabinets. In spite of their compliance, however, Harry and Theresa were treated with utter contempt. Throughout the ordeal, a fully automatic machine gun was intermittently thrust in both their faces.

The Lamplughs watched in horror as the thugs literally trashed their house. Furniture was overturned or smashed, and papers were scattered everywhere. Three pet cats were ruthlessly killed-one literally stomped to death. The gang ransacked their house for more than six hours. When they finally left, Harry and Theresa stood confused and angry in the midst of their demolished home.

The brutal and inhumane events that you have just read about are not fiction. They were taken from the testimony of Harry and Theresa Lamplugh. Only the intruders were not some violent street gang or foreign terrorists; they were agents of the Bureau of Alcohol, Tobacco and Firearms (BATF), and the Internal Revenue Service (IRS).

Why would two Federal agencies send a small battalion of agents to terrorize this couple in the supposed safety of their home? What terrible crime did Harry and Theresa Lamplugh commit that prompted this brutal six and a half hour ordeal? Shockingly, there are no good answers to these questions.

Harry Lamplugh, however, is in the politically incorrect business of promoting gun shows. His organization, Borderline Gun Collectors Association, happens to be the largest gun show promoter in the northeast. As anyone who has ever attended a gun show knows, there are more than firearms and accessories on display. A gun show is also a place where people of common interests meet to express their political views and share opinions. Not surprisingly, criticism of the BATF runs deep at such a forum. And it is no secret that the BATF spends considerable time and effort infiltrating these shows.

Since gun show infiltration is a massive undertaking that yields relatively small returns, the BATF has now honed in on a primary source, Harry Lamplugh. On May 23, 1994, the agencies obtained a search warrant authorizing both the BATF and the IRS to "search" the Lamplugh home. Included in the list of items to be seized were any firearms, ammunition, holsters, cleaning kits, gun cases, and firearm accessories. The Lamplughs' attorney points out that the warrant failed to name even one specific item. "Such warrants are vague, overbroad, and therefore unconstitutional", he said.

The agents also seized complete financial and business records of the Borderline Gun Collectors Association from 1988 to the present. This included all computer records and any other documents related to the sale and purchase of firearms. Obviously, the BATF was on some sort of "fishing expedition". But the most amazing aspect of the warrant is what was not on it. There was no reference to any crime by any person. The BATF appears to hold not only the Second Amendment in disdain, but the Fourth as well.

On Wednesday, May 25, 1994, the search warrant was executed. At about eight in the morning, Harry answered a knock on the front door and was instantly surrounded by agents. His wife was in the bathroom at the time. He had been sitting at the kitchen table in a pair of pajama bottoms having his morning coffee. "To this day I don't know exactly how many there were, but they had my house secured in seconds," Harry said.

According to Lamplugh, there was a total of six cars full of agents. They were not dressed in any uniform, and only two had the identifying ATF vests on. All firearms were drawn. An M-P5 machine-gun was stuck in Harry's face. They did not announce who they were or why they were there, and no search warrants were displayed. "When I asked if they had a search warrant, their first reply was 'shut the f--- up mother f---er, do you want more trouble than you already have?', with the machine gun stuck in my face," Harry said. "They then proceeded to tear my house apart."

The Lamplughs were not permitted to dress all day. "We couldn't even go to the bathroom without an armed guard, as if we were prisoners in our own home," says Mrs. Lamplugh. Then, like a slap in the face, the agents stopped everything to eat lunch. "They gave no thought to what we were going through. Some agents went out for pizza, and they had a little party. It was like a room full of kindergartners with no chaperone. They threw half emptied soda cans, pizza and pizza boxes everywhere. To some people, maybe it sounds like we're complaining about a small thing, but this is our home and they trashed it."

The agents' reckless conduct at the "pizza party" characterized their behavior throughout the raid. "Because I have cancer, I usually have about 20 bottles of prescription drugs on top of my bureau. For some unknown reason, they thought it necessary to open the bottles and scatter the contents all over the floor. Consequently, two of our cats got into the medication and died horrible deaths."

The agents continued their aimless search. "Where's the machine-gun?" one of the agents asked. Finally, an indication they were looking for something in particular. "At first I didn't know what he meant," Harry said. "Then I recalled that I once owned a Viet Nam commemorative Thompson, inlaid in 22 karat gold, but that was a semi-automatic. One of the agents then responded, 'That must be what they're talking about.'" The agents were apparently looking for something that wasn't even there, or illegal to possess.

However, they were very thorough in sifting through what was there. But for what reason did the agents take marriage and birth certificates, school records, insurance information, vehicle registrations and titles? Harry points out that "they were so thorough that for about two weeks, we would have had a hard time proving who we are. They took all of our contacts with newspapers (over 600), all friends and family phone numbers, and even my medical records." There were sixty-one firearms and assorted ammo seized in the raid, valued at over $15,000. The agents took about 70,000 names and addresses of exhibitors and also gun show contracts through the year 2000. A stack of mail was opened, read, and also confiscated.

Finally, at about three o'clock, the wrecking crew finished their destruction. In one final unconscionable act, female agent Donna Slusser deliberately stomped to death a cherished minx kitten, and kicked it under a tree.

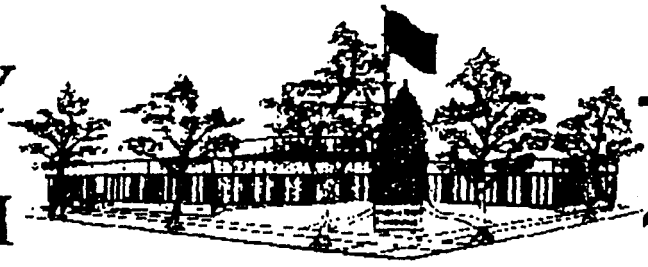
The affidavit in support of the warrant was made by BATF special agent Scott Endy. For reasons unknown to the Lamplughs, the affidavits were sealed by a local federal judge. An Assistant United States Attorney was asked by the Lamplughs' attorney to unseal the document, but he has steadfastly refused to do so.

The persecution Harry and Theresa have endured has been extremely harsh. At no time was this peaceful couple informed of any violation of the law, and to this day no charges have been brought against the Lamplughs. Yet, the BATF has refused to return any property, even medical records and other personal documents and possessions.

The actions of the men and women who entered the Lamplughs' home must not be ignored or forgotten. The Lamplughs are victims, not suspects, in this matter, and this is but one of the many examples of the BATF's abuse of its power through the years. This government brutality must be stopped.

EXHIBIT 9
DATE 1/20/95
HB 160

COUNTY OF RAVALLI



STATE OF MONTANA

The Bitterroot Valley

Hamilton, Montana 59840

NOVEMBER 24, 1993

LARRY HUGGINS, SPECIAL AGENT
INTERNAL REVENUE SERVICE
800 KENSINGTON
MISSOULA, MT. 59801

RE: SEARCH WARRANT EXECUTION - MARC ANDRA

DEAR LARRY:

I AM TAKING THIS OPPORTUNITY TO EXPRESS MY DISPLEASURE AT THE MANNER IN WHICH YOUR SEARCH WARRANT EXECUTION IN RAVALLI COUNTY WAS HANDLED.

I DO NOT TAKE ISSUE WITH THE LEGALITY OF YOUR WARRANT OR YOUR AUTHORITY TO EXECUTE IT, NOR DO I CARE TO BE INVOLVED IN YOUR INVESTIGATION. I DO, HOWEVER, TAKE ISSUE WITH THE SEEMING LACK OF COMMUNICATION YOUR AGENCY EXHIBITED TOWARDS MY OFFICE. YOU NOTIFIED MY DISPATCHER AT 0645 THAT YOU WOULD BE IN MY COUNTY SERVING A SEARCH WARRANT AND PROMPTLY AT APPROXIMATELY 0745 MY OFFICE GETS A FRANTIC 911 CALL FROM THE ANDRAS.

WHERE I HAVE A PROBLEM, IS YOUR LACK OF COMMUNICATION TO ME AND YOUR APPARENT UNWILLINGNESS TO COORDINATE WITH MY OFFICE. I EXPECT TO BE NOTIFIED IN A TIMELY MANNER WHEN ANY OUTSIDE AGENCY CONDUCTS AN OPERATION OF THIS TYPE IN THIS COUNTY. I THEN EXPECT TO BE INVOLVED UP-FRONT, NOT AFTER THE FACT.

I HAVE ALWAYS COOPERATED WITH OTHER AGENCIES, YOURS INCLUDED, TO EVERY EXTENT POSSIBLE AND IF YOU OR YOUR AGENCY DISTRUST ME OR HAVE REASON TO BELIEVE I WOULD COMPROMISE YOUR INVESTIGATION, YOU HAD BETTER DISCUSS IT WITH ME.

RAVALLI COUNTY SHERIFF
205 BEDFORD, BOX 5022, HAMILTON, MT 59840
(406)363-3033, FAX (406)363-7599

I=SUSPECT THAT YOU KNEW WHO YOU WERE DEALING WITH, AND TO CONDUCT AN EARLY MORNING RAID IN CIVILIAN CLOTHES, IN UNMARKED VEHICLES WITHOUT THE INVOLVEMENT OF MY OFFICE WAS FOOLHARDY. I AM NOT SURE YOUR AGENCY NEEDS THE NEGATIVE PUBLICITY THAT A SHOOTING INCIDENT WOULD INVITE, CONSIDERING THE CONDITIONS YOU WERE FACED WITH THE OTHER DAY.

IN VIEW OF THE FACT THAT I AM THE DULY ELECTED SHERIFF/CORONER IN THIS COUNTY, AND IN VIEW OF MY 21 YEARS OF EXPERIENCE DEALING WITH THE CITIZENS OF THIS COUNTY, I AM GOING TO DEMAND A LITTLE PROFESSIONAL COURTESY FROM YOU AND YOUR AGENCY, OTHERWISE WE WILL BE AT ODDS. MY INTENT IS NOT TO SOUND ARROGANT, HOWEVER, I WILL NOT STAND MUTE ON MATTERS SUCH AS THIS.

IF WE CAN WORK THIS OUT, I DON'T INTEND TO TAKE THIS ANY FURTHER. IF NOT, LET ME KNOW.

SINCERELY,
RAVALLI COUNTY SHERIFF'S OFFICE

JAY PRINTZ, SHERIFF/CORONER

10
EXHIBIT
DATE
160

Bob Strong/Sipa Press

I'm from the government. I'm here to help you.

EXHIBIT 11
DATE 1/20/95
HB 160

Representative Bob Clark
Chairman - House Judiciary Committee
House of Representatives - Capitol Station
Helena, MT 59620

January 23, 1995

Dear Chairman Clark,

I want to follow up my appearance before your committee on HB 160. First, Thank you and the committee members for the courtesy you all had in hearing me out. I feel the federal government has betrayed our trust and violated citizens rights with immunity for too long.

Second, I want you and the committee to know that I neither belong to nor support any group who attacks any race or advocates the overthrow of our government. The only person I had talked to about this bill or any related matter prior to your hearing was Representative Aubynn Curtis. I contacted her to compliment her on introducing this much needed legislation. She invited me to appear and comment. I did. My comments are straight from the heart.

I heard that a newspaper report inferred that all of us at the meeting were somehow linked to various groups. Apparently someone fears citizen input. To my knowledge, prior to that hearing, I had never formally met most of the gentlemen or the two women who spoke. Mr. Hammermeister and I have talked numerous times. I had seen Red Beckman (Who hasn't?); and, I did speak to him and his wife briefly after the meeting. Mr. Strandel was at on the public meeting in the Capital rotunda either last summer or the year before. I don't even know for sure just what groups were represented at the hearing. I first met Gary Marbut by phone when the Brady Bill was being pushed. I am proud to be a member of the NRA. I do share the view that we must get control over these rogue agents.

Apparently there were reports of proponents booing or hissing opponents. I never heard any hissing or booing. I did hear some obvious groans when Mr. Strizich and Ms Egan made some of their comments. Some of us are new at this process; and, perhaps you could admonish the speakers about that sort of thing in the future to avoid further problems. I'm sorry for all of us if a few might have offended the committee; however, I would ask all of you to keep focused on the issue. This bill needs to be passed!

I don't belong to hate groups and would fight to the death for the lawful rights of any and all citizens. I do hate corruption and arrogant governmental abuses. I was ready to die for those principles when I volunteered to serve in Vietnam and I will die for them today. My entire family and many friends share the belief of thousands upon thousands (probably millions) of Americans, that the federal government has overstepped its authority and is out of control in many areas. My wife and I employ up to 10 people at times. Contrary to the remarks made by Ms. Egan, we do pay our

taxes.

I really resent anyone even inferring that by my appearance before your committee, that I am somehow a hate monger or extremist. I am a free American who loves this great country with all my heart. We want nothing more than to have our government be honorable.

If any member of the committee believes that WACO was necessary, that it is okay for a federal sniper to shoot a 14 year old boy and his mother over an unproven weapons charge set up by an undercover agent; or that US agents should wear black masks when they make raids on private citizen's homes, then I guess my protest of governmental abuse will go unrecognized.

You have our freedoms in your hands. Make the federal government accountable to us as required under the Constitution. I urge you to remember the 10th Amendment, the Bill of Rights. We trust that you will do the right thing by passing this Bill.

Thanks again for hearing my views. Please pass HB 160.

Sincerely,

Stoney Burk

Stoney Burk
P.O. Box 70
Choteau, MT 59422
(406) 466-5755/5490

EXHIBIT 12
DATE 1/20/95
HB 160

HOUSE OF REPRESENTATIVES

JUDICIARY -COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Walter L. Hammermeister BUDGET

ADDRESS Box 1153 Conrad DATE Jan 20, 1995

WHOM DO YOU REPRESENT? myself

SUPPORT X OPPOSE AMEND

COMMENTS: HB-160 The Weaver and Harris Fiasco in IDAHO COST in extra ordinary expense the State of IDAHO - ~~this~~ Dept of Law Enforcement this does NOT include Boundry County the National Guard or anyone else. Just the State $55,203.05 For food, Lodge & over time - they recovered most of that money but only From the presistance of Richard Cade From Aug 1992 until the Spring of 1994 and 2 Letter From Governor Cecil Andrus direct to Atty Gen Janet Reno, & Richard Cade from his effort does NOT have a F.B.I Agent in the Salt Lake City Division that will speak to him. But IDAHO recovered $6,200.00 From the U.S Marshal service & Finally From ~~Through~~ a special Grant through ATTY. General Janet RENO they received $48,926.00 which is short only $77.05 of collecting in FULL

HR:1993
CS16

EXHIBIT 13
DATE 1/20/95
HB 160

Jan. 20, 1995

HOUSE JUDICIARY COMMITTE

Walter L. Hammermeister in SUPPORT OF H.B. 160.

HONORABLE Chairman and Ladies and Gentlemen of the House Judicial committee, I am Walter Hammermeister from Conrad, Mont, my main income now is from farming and ranching, and I do a little work as a Lic. Pvt. Investigator. I am retired with nearly 24 years in the Pondera County Sheriffs Department with 20 of those years as the Sheriff. I am a past president of the Mont. Sheriffs and Peace officers Ass. and I was a guest instructor at the Mont. Law enforcement Academy, mostly in the criminal investigation field for 12 years. I graduated from the FBI National Academy a class mate of mine Richard L. Cade, just recently, ~~with a grade average of 96% which was just 1% below the outstanding student of a class of 100 members, of which 10 was from foreign countries, my class had one of the highest academic levels of any class then graduated with an academic average of 92%. Not only was academically high but out of the 100 members we have 8 including myself that have shot a perfect score with a 4" revolver at an FBI shoot.~~ retired as the director of Idaho's Dept. of Law Enforcement, which includes the State Police, bureau of Narcotic, of Investigation, of Criminal Identification, of the Forensic Labatory, of alcoholand beverage control, Race Commision, the Brand Board, & P.O.S.T, there are 500 employees with a $38,million budget, Some of my information, came from him, particularly the costs.

I am an member of the F.B.I Nat ~~of the now 177 different classes, which now have about 250 students only 2 other classes come near that many perfect revolver shots, those 2 classes have only 6 student that have shot perfect scores.~~ Academy possible club, which is for shooting a perfect score at a F.B.I shoot with a 4" revolver & tomorrow Jan 21, is 21 years to the day of the death of Senator Ethel Harding, Daughter by Peter Duncon McKenzie. My Dept worked the case

With that background in mind, Representative Curtis contacted me to support this H.B. 160 basically only from knowing me from my work in previous legislation and my ideas as a sheriff. SHE DIDN'T previously know my strong feeling on this exact subject. Due to the feasco near Naples in Boundry county Idaho and then later the Waco Texas incident. I have never attended

any more FBI National Academy retraining sessions since then. because I felt I might get outspoken on that incident.

AFTER that Idaho shooting I wrote a letter to the Sheriff of Boundry Co. Bruce Whittaker, complimenting him on his efforts to investigate the Federal officers actions, I let him know I Had shot with Federal officers enough to believe the killing of the 14 year old son shot in the back while running away and the shooting of Weavers wife while in her house and holding their baby and holding open the door so her family could get in the house while being shot at was no accident, and I urged him to seek deliberate homicide prosecution of not only the officer doing the shooting but their superior that even suggested such a type of surveillance. I wrote him that I suspected the Federal officers exceeded their authority and certainly did not use good discreation in their actions, When a person had been isolated and neutralized for a year and a half, and that is probably more time than he would serve in jail for selling, nearly 3 ars before, 2 sawed off shot guns to undercover federal AT&F agents, if he was convicted, I let him know that I can match situations and experience with just about anyone or department, my deputies have been shot at and shot, including situations by mentally demented and highly drugged individuals, and even hostage situtation with the intention to kill a cop. Each case was quickly defused with me usually being the one taking the person into physical custody, yet you will have a hard time finding anyone in Poudre Co. that has ever seen me with a firearm on my hip.

I have been well trained how to agravate an irate person to get th slightly assault you so you can arrest them, even the way an officer walks up to a truck can get a person on the fight. CONVERSELY proper action can neutralize a situation without

Support of HB. 160 by Walter Hammermeister

EXHIBIT 13
DATE 1-20-95
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I sent copies of that letter to his County Attorney, the Attorney Gereral and the Governor of the state of Idaho, and one copy to the defense Attorney Gerry Spence, I got a very complimentary classic letter from Gerry Spence,

On Saturday July 17, 1993 Idaho Congresman Larry LaRocco in a telephone conversation, with Attorney General Janet Reno said, he reminded Reno that the shootout and siege that left a U.S. Marshal and Weaver's wife and son dead came barely a year after Federal agents conducted a major gambling raid on the Panhandle's nearby Silver Valley, which is in his congressional dist. Federal juries in both cases rejected the government's allegations and acquite the key defendants. "Many of my constituents are concerned about the role of the federal Government," LaRocco said he told Reno. "If you're living in norther Idaho, you're really scratching your head about what's happening."

The FBI is supposedly limited by Congress to about 179 specific types of criminal investigations that they can even get involved in, EXCEPT there is NOW a loop hole that is big enough you can drive a truck through. that loop hole is, at the request of the Attorney General of the U.S. or its designated agent. That designated agent is every states U.S. Attorney. That power is being abused. I know of an FBI special agent from Glasgow and one from Great Falls, that had to investigate strictly CIVIL cases for a federally connected lending agency.

Support of HB. 160 by Walter Hammermeister

Each Investigation with the obvious intention of intimidating the defendents. One intimidation was so obvious, the FBI agent was supposed to be investigating for an aledged threat against a Bankruptcy Judge. As soon as this Lady that was being investigated got the FBI agent out of her house, she called me, because her husband was out of town and douldn't be reached. I then called the FBI agent he denied to me that he had even talked to this lady, until I told him that I was going to call the FBI headquarters in Wash. D.C. because someone was inpersonating a FBI agent and he had even left his business card with that FBI agents name on it with the lady. Then the Agent did talk some to me, I offered to work with him to clear the lady, BUT the agent could not even tell if the aledged threat was verbal or written let alone what the aledged threat was about. Later After the FBI agent was informed by the lady, her husband was a former Deputy Sheriff from Lewis and Clark county, but mainly HER UNCLE WAS A CURRANT FEDERAL JUDGE, He fell over himself trying to apoligize, and get her to forget the incident. This intimidatio was because THEIR 11 year old son had written a letter to Stormin Norman (General Schwartzkoff) after the Qwite conflict to come in and clean up this federal lending agency, in support of his Grandparents financial problems with the federal lending agency. The Great Falls Tribune heard of that letter and they invited the printing of their sons letter in their paper. After another blunder or so, I was asked to hurry to Great Falls on a Sunday evening to observe the agreement setlement and signing with the federal lending agency.

EXHIBIT 13
DATE 1-20-95
HB 160

Support of HB. 160 by Walter Hammermeister

These four involvements by Federal agents are completely out of line, and they certainly do not use good descreation, when they send US.Marshalls from Mass. into the mountains of northern Idaho, and it takes the state of Idahos SWAT team using night vision goggles most of the night to go up the mountain a mile and a half, find the 4 Mass. Marshalls and bring them and their dead marshall out that mile and a half. ALSO NO SELF RESPECTING Montana Sheriff would ever get involved in a civil case investigation.

Due to these absurbed incidents, At times I am embarassed to say that I am a FBI National Academy Graduate. I believe it is past time to try and control this type of out of line conduct by federal agents. THEN congressman LaRocco it is NOT just northern Idaho that is concerned and scratching our heads about what"s happening.

I urge you to pass this HB. 160.

Thank You!

Walter L. Hammermeister

Walter L. Hammermeister

EXHIBIT 14
DATE 1/20/95
HB 160

The people of The United States of America and Montana in particular sent a message to government last November, but many of you still don't get it.

We are tired of business as usual. The "Good Ole Boy" way of doing things, the arrogant "we know what's best for you" attitude, and the spend then tax mentality. But I think first and foremost on the minds of millions of Americans is the ever increasing intrusion into the lives of all of us by our Federal Government, and it's obvious usurpation and abuse of power.

Our Federal and State Governments are agents of The People, not the other way around, and they from time to time seem to forget they are The Peoples servants. We pay them, and we expect them to represent us, not their own personal agendas. Through our system of Government they can be removed or replaced.

Our State has had good people in elected positions, and I don't have any real axe to grind other than maintaining Montana as a sovereign state, controlling Federal policy over our land and its people. That after all is your duty and responsibility. The Constitution and Bill of Rights, in particular the 10th Amendment grants you that right and responsibility.

Of great concern to all Americans are the ever increasing Gestapo type tactics, and illegal use of Federal agents and military personnel against citizens of our Republic. In many, and I mean thousands of cases, innocent people have been hurt and killed. Personal property unjustly seized and never returned. Illegal searches and destruction of private property have taken place all across our country by "Federallys", the FBI, IRS, and other alphabet soup agencies, all supposedly in the name of the law.

Nowhere can the abuse of power and authority have a more devastating effect than in law enforcement, and particularly on the Federal level.

The worst part of it is there seems to be no accountability for these treacherous deeds, and no recourse for those affected. Deeds done by people wearing black suits and ski masks designed to strike fear into the hearts of those they attack. Only a few years ago black was worn by the bad guy, and ski masks only worn by terrorists.

What's wrong with this picture folks? Are we Nazi Germany, the U.S.S.R., or some other totalitarian state? I think not!

You have the opportunity right now to help take back our country, and Montana re-establish her sovereignty. The "No more Wacos" bill sounds trite, but is exactly what we need and want as citizens of Montana.

This bill would put the ultimate law enforcement responsibility on the county Sheriff, whom is accountable locally and, in most cases, an elected official. He is more in touch locally, generally knows the people, and is more likely to handle a potentially dangerous situation in a reasonable and sane manner. He is one of the residents, he or she raise their families, educate their children, and are a part and spirit of their respective communities. Who better to oversee the carrying out of peace keeping and law enforcement than one of us, with such close ties to the community?

Please ladies and gentlemen, let us not set the stage for another Waco Texas, another Ruby Ridge Idaho, or any more Federally sanctioned, taxpayer funded atrocities. Let us establish authority where it should be, at home, in our own towns, not accept some authority handed down through a bureaucracy in Washington D.C., where the end result is so often appalling and unforgivable.

Whether you agreed with the Branch Davidians in Waco, or believed the lies and cover-ups, those people had a right to live as they did. How can you justify the terrible deaths of 86 innocent people, including 17 children? They can't. That was Federal law enforcement in action. What was supposed to be a moment of glory for the B.A.T.F. and it's agents, instead turned into 51 days of tragedy, and in the end an entire nation in shock and mourning.

To me it was an atrocity, and could have been prevented, had the local Sheriff been allowed to handle the situation. Remember this was a simple firearms violation which was never proven, and a valid search warrant was never served. And as if to see how America would react, innocent men, women, and children were gassed and then burned to death. Cs gas was used even after Janet Reno was warned of the possibility of it turning into cyanide gas when used in a building. Cs gas is not even allowed for use in war, as agreed to in the Paris Convention of 1933 by the U.S. and 130 other countries, yet this is how we treat our own citizens.

There are many more examples of Federal law enforcement gone amuck. The sad part is it ruins peoples lives, if not taking them, and it happens laughing in the face of our Constitution, the 4th Amendment, and The Bill of Rights.

Please ladies and gentlemen, this is one bill that is not going to cost a lot of money or create any new bureaucracy. It simply validates our local Sheriffs authority and responsibility to their local communities and citizens.

EXHIBIT 14
DATE 1-20-95
HB 160

To me it is a shame that we now fear our own government and that in itself should be grounds enough for you as our representatives to take action without waiting for another tragic event to occur, maybe next time in your own back yard. If you don't have the foresight to pass this bill, you too could have the blood of possible innocent victims on your hands and in your minds. We will remember, and we <u>will</u> hold you accountable.

Thank you very much, and GOD Bless America!

Kim L. Liles,

EXHIBIT 15
DATE 1/20/95
HB 160

Appley Repair
CAR SALES & AUTO REPAIR
902 BIRCH AVENUE SHELBY, MONTANA 59474
(406) 434-2915

FAX TRANSMISSION SHEET

WE ARE TRANSMITTING 1 PAGES (INCL. COVER SHEET)

DATE: 1-29-95 9:30 pm

ATTENTION: Judicial Committe - House Judiciary Committee

FROM: Bob & Hattie Appley

MESSAGE:

We strongly urge you to support House Bill # 160.

Thanks
Hattie Appley
Bob Appley

IF TRANSMITTAL IS NOT CLEAR, PLEASE CALL 406-434-2915

FAX: 406-434-7148

EXHIBIT 16
DATE 1/24/95
HB 160

RM 312-1A SEC JOANNE GUNDERSON

1789 Nighthawk Trail
Victor, MT 59875
January 29, 1995

House Judiciary Committee
Montana House of Representatives
Capitol Station
Helena, MT 59620
FAX 1-900-225-1600

Dear Judiciary Committee Members:

Please give every ounce of your support to HB 160; this is to me the most important piece of legislation of this session. The crimes by federal agents must stop.

Of almost equal importance is The Fully Informed Jury bill, HB 296, please support this measure as well.

Thank you for your consideration.

Sincerely,

Robert Gairing, Ph.D.

EXHIBIT 17
DATE 1/20/95
HB 160

P.O. Box 996
Swan Valley, MT 59826

28 January, 1995

TRANSMITTED BY FACSIMILE

House Judiciary Committee
Capitol Station
Helena, MT 59620

FAX ~~444-4105~~ 1-900-225-1600

I support HB 160. Please pass this bill through your committee.

Respectfully submitted,

Jay W. Callaway
(406) 754-3024

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE January 20, 1995

BILL NO. SB 1 SPONSOR(S) Sen. Gage.

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Greg Petesch	Leg. Council		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE January 20, 1995

BILL NO. SB 10 SPONSOR(S) Sen. Gage

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
John Connor	MT County Attys Assn	✓	

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HR:1993
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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/20/95

BILL NO. 161 SPONSOR(S)

PLEASE PRINT ! PLEASE PRINT ! PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dallas Erickson 4479 Stone Lane Stevensville MT 59870	MCDL	X	

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE January 20, 1993

BILL NO. HB 161 SPONSOR(S) Rep. Curtiss

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Laurie Koutnik	Christian Coalition of MT	✓	
Kenneth W. Moore	Montana Association of Churches		
SHARON HOFF	MT CATH CONF	✓	
John Connor	MT County Attys Assn	✓	
Arlette Randash	EAGLE Forum	✓	
Sharon Bakersed	MACeM	✓	
Scott Crichton	NCLL		✓

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/20/95

BILL NO. 160 SPONSOR(S)

PLEASE PRINT ! PLEASE PRINT ! PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
GARY D. HANCOCK CAPT. USAR (Med Retired) PO Box 1702 E H.	Myself	X	
CARL S. MARBUT	MSSA, NRA, GOA, WMFGA, BSPSC	X	
Louis M. Kelleher	P.O. Box 469 Bonner MT 59823	X	
A. W. (Bud) Elwell	WCSM / NWAC	X	
MJ 'Red' Beckman	Montanans for Constitutional Government	X	
Walter L. Hammermeister	Myself	X	
Cecil Storms	"	X	
Stoney Burk PO Box 70 Choteau, MT	Myself	X	
Matt Brainard, Representative 4479 Stone Ln	Myself & HD 62	X	
Dallas Erickson Stevensville MT	Myself	X	
Kay Foster	myself		
Pam Egan Helena	MT Family Union		X
Bill Strizek	self		X

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE January 20, 199

BILL NO. HB 160 SPONSOR(S) Rep. Curtiss

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Laurie Koutnik	Christian Coalition of MT	✓	
Phillip Z. Sanders	Citizens to Preserve the 2nd Amdt	✓	
[illegible] 620 Linda Vista Mesa	Individual	✓	
John W. Appert 21600 Conifer Huson, MT	INDIVIDUAL	✓	
Richard Overcast MSCW 5145 Hwy 93 S.	SELF	✓	
Kim Liles #2 Columbine Rd. Missoula	Self	✓	
John A. Meyers 302 Chestnut St Missoula	Self	✓	
James P. Molloy 1700 Wilma Ave Helena, MT	Self		✓
Arlette Randash	Eagle Forum	✓	
William C. Hollenbaugh Missoula	Self	✓	
[illegible]	[illegible]	[illegible]	
PAUL STRAMER	Individual		
JAY FRITZ	RAVALLI Co Sheriff	✓	

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HOUSE OF REPRESENTATIVES
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JUDICIARY COMMITTEE DATE 1/20/95

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Charlene Kaufman	Human Right Network		X
T. Cella	I	X	

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